

AN INTRODUCTION TO THE SOCIAL SCIENCES

By ROBERT E. RIEGEL, Editor

W. L. EAGER FRANCIS E. MERRILL

RALPH P. HOLBEN EARL R. SIKES

J. M. McDANIEL ELMER E. SMEAD

LEWIS D. STILWELL

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PREFACE

Interest in the social sciences has increased tremendously within the past generation. Along with this increase has gone such an expansion of knowledge that even the intelligent and interested man has difficulty in grasping the main essentials of the field. The work of specialists has provided an amazingly complex set of tools and an abundance of lumber, but no common knowledge of how the materials and tools can be combined to make a satisfactory house.

College social science departments have grown with public interest. They have filled their ranks largely with competent specialists and have encouraged their students to concentrate their work in limited fields. The results have in some ways been good, but the student has thereby frequently been denied any adequate survey of the general field of the social sciences. For the average undergraduate the social sciences have meant a few unrelated courses which may or may not be fairly representative of the entire field.

Chaos in the social sciences has inevitably brought its harbingers of order. In some cases the student has been given a single social science course which presents in epitome each subject in turn—a modicum of history, a taste of political science, a helping of economics, and a pinch of sociology, with possible added sprinklings of geography, biography, and other spices. Such a course has several difficulties. The time for any one subject is so small that it is occupied largely with a few basic definitions. The division of subject material is never satisfactory because the departments are not really water-tight. The fragments of the course tend to be unconnected, particularly because each is taught ordinarily by a specialist without time or interest to fit his section into any general pattern.

Dartmouth has been experimenting with the general social science course for something over twenty years. Our central concepts have been three. (1) That the material be clustered around human institutions such as the family or the state, and not around traditional subject materials as history or sociology. The family, for example, is a natural unit for consideration, with ramifications in all social science departments. (2) That the institutions be developed as far as possible without consideration for ordinary departmental interests, and arranged according to psychological more than merely to logical considerations. Any topic such

as the family has such intimate relations with other topics that dozens of schematic arrangements become possible. In this situation the best solution is to arrange topics so that they best engage student interest. (3) That instructors should teach throughout the course, preferably in small discussion groups. A single instructor is much preferred by the average student, regardless of the competence of the specialized performers in a variety show.

The Dartmouth experience with the general social science course started with a required one-semester course for freshmen. The success of that experiment led to its expansion when the present social science curriculum was adopted. At present Dartmouth requires two years (twelve semester hours) of social science work for all undergraduates. A first-year course (six hours) is required of all freshmen and is generally historical in approach, developing Western civilization from the mid-eighteenth century to the present. The second-year general course is descriptive of current social institutions and their problems; it is not compulsory, but is particularly recommended for men who do not expect to major in the social sciences. For social science majors there is a different type of survey which requires more time and which gives greater technical information in the subject in which the student is to major.

The present book is the product of the second-year survey course. Its writing has been due to a dissatisfaction with the book readings used in the past. Only bitter experience can prove the difficulty of obtaining any adequate and readable description of a given social situation in a proper number of pages for a class assignment. Even where proper selections were available they were costly to provide, awkward to store and read, and uneven in style, content, and point of view. Such difficulties gradually exhausted our patience, and we started to write our own assignments. Put into mimeographed form they brought favorable reactions from the students, and in consequence we decided that other teachers with similar problems might be benefited if we gave our material wider availability in book form.

The work of preparing the book, as of designing and giving the course, has been coöperative. Of the eight participants, seven have been in the course from its start, while three taught in the earlier one-semester freshman course. The responsibility for specific chapters is indicated in the table of contents.

The topics have been picked partly on the basis of their intrinsic importance and partly for their function of including material from the various social sciences. Other topics might have been possible and one or more of the present list excluded, but we do feel that the present selection is highly useful. The most obvious omission is foreign affairs, which for us is covered adequately in the first-year course; others may desire to find the topic developed elsewhere.

The arrangement of the topics has come after considerable experimentation and seems both logically and psychologically sound. In general the early topics concern economic activity. This order indicates not only that we feel economic institutions to be of basic importance, but also that an understanding of them is of great importance in the intelligent consideration of other institutions. The survey of governmental functions comes near the end of the book because we feel that democratic government is the meeting place of the tremendous variety of forces which constitute modern society and consequently can be understood only as those forces are understood. Each topic has been written with sufficient completeness, however, to permit a different arrangement. The emphasis can be changed in numerous cases by omitting one or more chapters, or even topics.

The present staff presenting the course at Dartmouth is convinced of the desirability of encouraging student discussion of the material—if possible in quite small groups of not over fifteen. Such discussion should not be allowed to degenerate into violent debate, for severe clashes of opinion produce but little light.

Supplementary reading is of course optional with the instructor. Reading lists are presented by topics rather than by chapters. In our own teaching we have also made some considerable use of motion pictures.

Finally, our appreciation should be expressed to many people. Above all we have benefited from the encouragement and facilities given us by President Ernest Martin Hopkins, Dean E. Gordon Bill, and the trustees of the college; without their support our work would have been impossible. We are also intensely appreciative of the coöperation given us by the various social science departments of the college, and particularly by their chairmen. Then too we feel a considerable debt of gratitude to our students, who not only have taken the course with apparent pleasure and profit, but also have volunteered various suggestions of value. The Dartmouth College Library has extended us its unfailing courtesy and helpfulness. As to specific books and authors, our debt is too various and extensive to permit anything but a general expression of appreciation.

ROBERT E. RIEGEL
Editor

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Volume II

PART IX

Agriculture

CHAPTER 34

DIFFERENT KINDS OF FARMS

City people rarely realize the direct importance to themselves of farms and farmers. Only during a milk strike or some other sudden stoppage of the flow of food, are city dwellers conscious of their direct dependence on the products of the soil. The literal truth is that the farms keep the cities alive. Without food the whole nation withers—and almost all the food comes from American farms.

The farms also keep the cities alive in a second, and equally fundamental, sense. The farms furnish a large share of the people who create the cities. The rural birth rate is high ; the urban birth rate is low. In the larger cities there are more deaths than births. The cities, if left to themselves, would gradually lose inhabitants. A great migration has been going on for the last one hundred years. The surplus youngsters from the big farm families have been moving into and building up the great American metropolises. Scratch the surface of almost any city executive and you are likely to find a grown-up farm boy, who still likes to “dunk” his doughnuts and dreams of barefoot days in the back pasture.

One of the axioms, therefore, of American life is that farm folks are important. Their numbers alone make them important. They constitute approximately one-quarter of the total population. But to many minds their importance is even greater than their numbers because they are the sources of the nation's food, and to a large extent the sources of the nation's people.

In recent years these country people have been hard hit. For most of the nation the great depression began in 1929, but for agriculture it began in 1920. While the factories were booming during almost a decade of prosperity, there was poverty and bankruptcy in the countryside. When the factories slumped after 1929, the farms sank even farther toward despair. We have had to face the existence in this country of a very serious farm problem. The problem has deep roots and many branches. Some sort of a solution of the problem must be found if the vitality of the entire nation is to be preserved.

An understanding of the farm problem begins with the question, What is a farm? The answer to that question has almost as many variants as there are counties in the Union. The maple sugar counties of Vermont differ deeply from the peanut counties of North Carolina. There is a county in Maryland which specializes in goldfish; one in Michigan which is

devoted to peppermint; and a Louisiana parish which is proud of its shark farms. The variety is endless. Just as the term "business" may cover anything from a popcorn stand to a bank presidency, so the term "agriculture" includes a million-acre cattle ranch in Texas and a five-acre raspberry patch in New Jersey.

All that we can hope to do is to describe the larger and more typical crop areas in the United States. With these in mind, we can reach a rough understanding of some of the major issues of the farm problem.

Farming depends more than any other human occupation except fishing and warfare upon nature. Temperature, rainfall, the contour of the land and the character of the soil are fundamental factors. In the three million square miles of the United States, each of these factors varies greatly, and every variation is of critical significance to agriculture. Climate and topography are, therefore, the key ideas in our grand tour of the farm lands.

The "Milk-Sheds"

One of the great farm districts is the "milk-shed" of the Northeast: Pennsylvania, New York and New England are rarely thought of as farm states. Yet they contain a large number of prosperous farms—and a larger number of not-so-prosperous farms. The chief business of most of these farms is milk.

The first essential of a good dairy farm is grass—green grass in the summer and dried grass (hay) in the winter months. The Northeast has good grass. Its climate is too frosty for raising the best corn. Its soils are often too thin for the production of a first-class crop of wheat. Many of the hillsides are too steep or too stony to permit the use of the big harvesting machines or the four-row cultivators that go with modern grain-farming. But the Northeast does have the cool weather and the frequent rains which make good grass, and good grass makes good milk.

There is, also, a second "milk-shed" in the United States which rivals or surpasses the Northeast. This is the rolling country of northern Illinois, southern Wisconsin and southern Minnesota. There the grass is even better, and the costs of dairying are lower. This middle western "milk-shed" turns a great deal of its milk into butter. Butter keeps much better than fluid milk and can be transported farther. So the citizens of the great seaboard cities drink New York or New England milk and eat Wisconsin or Minnesota butter.

Dairy farming is by nature middle-sized farming. The profitable unit is a herd of twenty to forty cows with a hundred or more acres of pasture and hay fields. The care of such a herd is an all-year-round job and a skilled job. So the dairy farm tends to be a family farm. The dairyman and his wife and children live with and by their cows year after year.

Dairy farming also tends toward partial self-sufficiency. The family produces quite a few of its necessities. The land is likely to include a wood

lot where the farmer cuts his winter fuel. The manure from the herd goes on an extensive garden, producing most of the family's vegetables. A few pigs, a flock of chickens and an orchard fit easily into the scheme. Thus two of the major needs of human life, food and heat, are largely home-produced.

On the other hand, the modern dairy farmer goes to town to buy his clothing, furniture, amusements and tools. Tools nowadays include considerable farm machinery, a tractor, a truck and an automobile. Gasoline becomes a major item of expense. There is a big charge, too, for feed for the cattle. Grass and hay are not enough to keep the udders full of milk, especially in winter time. So the eastern dairy farmer feeds his cows with western grain. When grain prices are low, the eastern farmer prospers while the western farmer goes bankrupt. This is only one of the ways in which dairy farming, despite its partial self-sufficiency, is tied into the rest of the national economy.

In the novels, songs and dramas of America it is the dairy farm which has largely typified farm life. From John Greenleaf Whittier to Robert Frost the picture has been painted of lonely, old-fashioned farmhouses filled with romping children, fed with heavy meals, governed by hard-laboring, God-fearing parents, with sleigh-rides, picnics and spelling-bees to relieve the monotony of isolated toil. This picture still has some reality in the hilly counties of the "milk-sheds," despite the impact of the radio, the automobile, the beauty parlor and the mail-order catalogue. But Americans need to remember that dairy farming is only one of several distinct varieties of agriculture that exist in this enormous nation.

The "Cotton Belt"

A second typical farm area is the "cotton belt." From South Carolina through to Texas, "cotton is king." No other crop or combination of crops approaches cotton in the economy of the lower South.

Cotton is a long-season plant. The fields are sown in February or March and the last white harvest is gathered in November or December. Only in the semi-tropics, where the summers are moist and long, is cotton practicable. Yet cotton is a soil-depleting crop. It eats up fertility. Most southern soils are thin and weak, composed of sand or else red clay. So cotton fields have to be fed continually with fertilizer. Half of the fertilizer in the United States is bought by the farmers in eight southern states. Only in the black lands of Alabama and in the fat flood-soils along the Mississippi does cotton blossom without being "fed."

Cotton, also, is an all-year, cheap-labor crop. From early spring to late fall there is almost daily work to do in the fields. The rows have to be hoed repeatedly throughout the summer and the bolls ripen so irregularly that cotton picking lasts a month or two. All this is unskilled work to be done by children or any sort of grown-up.

Here we have the basis of the plantation system that dominates most of the cotton country. A plantation may cover a thousand or ten thousand acres. Its owner is a rich man, or at least a man who can borrow heavily from a bank. He needs to have money to pay the heavy fertilizer bill, and especially to pay for food and clothing for all his farm hands in the long months before the cotton is harvested and sold. Milk money comes in once a month; but cotton money comes in only once a year. This is one major difference between the North and the South.

The actual labor in the fields is done by poor whites and poorer Negroes. These folks are for the most part poorly educated and poorly fed and clothed. Their poverty is partly a reflection of the poverty of southern soils. A great many of them are farm tenants, rather than farm laborers. This means that they work on "shares" with the plantation owner. The owner furnishes the land, the tools, the fertilizer and a shack for the tenant's family; the tenant and his wife and children furnish the labor in the fields; the crop is divided more or less evenly between them after harvest. Usually the tenant gets his food at the plantation store on credit. He pays his "charge account" once a year at harvest time. When the year's accounts are squared, there may be just enough money left to buy some Christmas fireworks. Then the tenant goes into debt again. Often the plantation owner also is in debt, and manages to square accounts with the bank only at the year's end.

It is this debt system which accounts in part for the supremacy of cotton in the South. Cotton is a cash crop. It always will bring in at least a little actual cash. So the banker urges the plantation owner to plant cotton and nothing else as security for the bank's loans; and the plantation owner requires his tenants to plant cotton and nothing else in order that they may be sure to pay for the groceries they have charged. Cotton frequently is planted right up to the tenant's doorstep; and it is possible to find whole counties where hardly a single tenant owns a cow or keeps a kitchen garden.

Northerners have an impression of southern plantations as stately, vine-clad halls of traditional romance. The southern colonel sipping a mint julep with his charming daughter on the broad veranda under the magnolia trees is part of our imaginative heritage. Such plantations do exist. But the more common picture is that of a hard-driven and hard-driving landlord living in a modest, modern six-room house, and master of a dozen battered cabins scattered across the cotton fields; and in each of these cabins dwells a tenant family eating little else but "hog and hominy," cooking over an open fireplace, sleeping often on the bare floor, unable to afford screens or glass for their windows or the luxury of a roof that does not leak.

Yet landlord and tenant despite the contrasts in their ways of life have one common, overwhelming interest. Their successful survival depends upon the price of cotton.

The Southern Highlands

In sharp contrast with the cotton belt which occupies the lowlands and the foothills, we have the Southern Highlands. From Pennsylvania to Alabama stretch two long, high mountain ranges flanked by lesser hills and broken valleys. This is the land of the "hill-billies" or the "mountain whites."

No people in the whole United States are so completely agricultural, in the sense that they derive their entire livelihood directly from the land. It is a meager livelihood obtained by ancient methods. They possess no agricultural machinery; they often do not own a single mule. By hand labor they till hillside cornfields with slopes as steep sometimes as 45 degrees. On their backs they carry corn to the grist mill and carry home the corn meal to feed the children. With an axe they hew the timbers for their cabins and cut their winter's fuel. With a rifle they shoot a good share of their meat. Even clothing is largely home-made. Until twenty years ago, when the new textile mills and coal mines opened at the bases of the mountains, these people had rarely seen two dollars side by side at the same time. The techniques of the eighteenth century—each family ninety per cent self-sufficient—have been the rule in mountain agriculture.

In eighteenth century fashion, too, the mountain people raise big families. Their birth rate is the highest in the United States. The children are often born without a doctor, and often raised without a schoolteacher. They marry early—the girls sometimes as early as fourteen—and the new family is likely to start housekeeping in a new cabin in the same upland "cove." On land which was never fertile and always hard to till, the population multiplies and poverty increases.

The customs of these highlanders are pungent with intense, old-fashioned individualism. These are the people who wage feuds for generations over some small quarrel between families. These are the people who make "moonshine" corn liquor in their mountain stills and defy the government of the United States to make them pay a tax or get a permit. Trained from childhood to handle guns, they make no bones of defying the courts, the sheriffs, and all other officers of the law, whenever they are seriously "riled." The intermittent shooting-matches in Hardin County, Kentucky, are only one example of the "quick-trigger" spirit of the Southern Highlands.

The "Tobacco Belt"

Tucked in between the milk lands of the North and the corn and cotton country of the South lies a fourth distinctive area of agriculture. This is the "tobacco belt." It centers in the three states of Virginia, North Carolina and Kentucky. It rests its prosperity upon the firm basis of the oldest and greatest of American vices.

The tobacco country is a middle ground. In agriculture, as in politics and social life, it represents a compromise or combination of the qualities of the South and of the North.

Tobacco, like cotton, is a soil-depleting crop. The "tobacco belt" is littered with "old fields" which were long ago abandoned as exhausted and now are overrun with slash pine and underbrush. The lands which are still in use are kept alive with heavy annual doses of concentrated fertilizer. Tobacco farmers think of seed and fertilizer as inseparable. There is no use "planting" one without the other.

Tobacco too, like cotton, needs a long growing season. It takes at least six months to reach maturity. The young plants are usually started in "cold frames" or "hothouses" where they are sheltered artificially from late spring frosts. Tobacco can be grown after a fashion as far north as Canada; and there is a special type of cigar-wrapper tobacco which prospers in the Connecticut Valley of New England. Yet the "weed" is fundamentally at home in the long, hot summers of the upper South.

On the other hand tobacco culture is skilled labor. This makes it more akin to northern farming. Tobacco plants are temperamental vegetables requiring constant and almost loving care. The curing of the finished leaves by fire or smoke or long exposure to the air is at least as technical a process as is the curing of hams and bacon. The crop has a high value per plant and per acre. It is altogether semi-precious stuff to be handled with care.

The typical tobacco farm is a fairly small estate of fifty or a hundred acres. Some of the farmers are "share-croppers," but the majority are owners of the land they cultivate. There is a tendency toward partial self-sufficiency. Pigs, cows, chickens and a garden supplement the family income. The homes are small and somewhat barren, but they are painted or at least whitewashed, and each is likely to contain a stove, a washing machine, some carpets and some pictures on the walls. There is an air of stability and independence in the tobacco country which is lacking in the "cotton belt."

The state of North Carolina has the largest tobacco acreage. Its farmers are many of them little people living in little houses on little farms. They have been traditionally regarded with contempt or condescension by the proud plantation families of the cotton states. Yet North Carolina's independent yeomanry has been far ahead of other southern states in such essential matters as roads and schools and colleges and public health. They take a lively, intense interest in politics and pour into the state capitol at Raleigh to have their personal say on any controversial question. The North Carolina spirit of democracy and progress is not by any means entirely attributable to its tobacco culture. There are large industrial interests in the state and many other factors. Yet the land and the crops do shape the characteristics of the people, as any traveler passing from the "tobacco belt" into the "cotton belt" can hardly fail to testify.

The Corn-Hog Country

When politicians or economists speak of farmers, they usually are thinking of a fifth area of agriculture—in many ways the most important of them all—the corn-hog country. From eastern Ohio through to middle Nebraska, the upper Mississippi Valley is a world of corn and hogs.

The land in a good share of this Middle West is a farmer's dream. The soil is deep, rich loam; the fields are level or moderately rolling; the summers are hotter and longer than in the Northeast; the rainfall is usually abundant. In such a country corn grows ten feet tall. The corn is promptly fed to whole battalions of pigs which ultimately die for their country in the great middle western packing houses. There is considerable feeding of corn, also, to young steers which make the choicest beefsteaks. But the major calculation of the Middle West is the "corn-hog ratio" (11 bushels of corn = 100 pounds of pork).

Such farming is scientific farming. The farm families read the latest governmental bulletins, send their sons to the state agricultural colleges, and gather around the experiment stations and the county agents to learn the newest biological inventions. They practice rotation of crops with conscientious skill. A field is used for corn one year, for pasture a second year, for hay or oats a third year. The ground is equally suitable for all purposes, and its fertility is thus continually renewed. Agricultural machinery is used to the limit. Rare is the farmer who does not have a whole barnful of planters, cultivators, harvesters, tractors, fertilizer-spreaders and a half-dozen other gadgets.

It is obvious that this kind of agriculture is capitalistic. It takes money to be a corn-hog farmer. The land itself may cost two hundred dollars an acre; and a quarter section (160 acres) is considered a small-sized farm. There are great barns to build and to repair, long fence lines to maintain, and a machinery bill which increases every decade. Not every young man can produce the \$20,000 or \$30,000 which are needed for so considerable an enterprise. The consequence is a large amount of mortgages and of tenantry. Able, fairly prosperous farm families rent all their land from absentee landowners. Other families have mortgages on their land for half or two-thirds of its value. Half the farm mortgages in the United States are in the Middle West, and the tenancy rate runs over 50% in a state like Iowa. This is the precise point where the shoe pinches during a depression. The prices of farm products may drop to half their normal level; but rents and interest on mortgages drop hardly at all. The farmers are faced with eviction or foreclosure. A great howl goes up from the Upper Mississippi Valley and the government decides that "something must be done for agriculture."

Yet life, in normal times at least, is far from desperate in Indiana, Illinois and Iowa. The farm home is ample, neat and equipped with modern

conveniences. The folks all have their telephones, their daily paper, their automobiles and their radios. They make full use of the great mail-order catalogues, and expect to make at least one trip a year to Chicago or Omaha to do their major shopping. A winter vacation in Florida or California is not beyond their expectations. The better farmers seriously hope to retire in their fifties or sixties, turn the farm over to the children, and live off their accumulated savings in the county seat. Life in the Corn-Hog Country may seem as flat and heavy to an Easterner's eyes as is the land itself. Yet the Middle West is none the less the most prosperous and the most promising of all the agricultural regions in America.

The Wheat Lands

Beyond the Corn-Hog Country lie the wheat lands. The dividing line runs a little east of the rooth meridian of longitude. Most of the Dakotas and the western counties of Nebraska, Kansas, Oklahoma and Texas are one vast, waving field of wheat. There are great wheat lands, too, on the plateaus of eastern Oregon and Washington.

There are special reasons for this concentration of the nation's "bread basket." Wheat demands rich soil. This, in the American scheme of things, means largely virgin soil. We are unwilling to pursue the European method of using the same land decade after decade with heavy fertilizing and intensive cultivation. In our history wheat has steadily moved westward, from New England to New York to Ohio to Illinois to Kansas. Each time the cream of the earth's juices has been used up in wheat. Then the wheat belt has moved on to newer, stronger soils. The newest soils that we have left inside the United States are the present wheat lands. The next move is already in full swing, to the even newer lands of western Canada.

Wheat, moreover, can be grown with relatively little moisture. Beyond the rooth meridian the rainfall averages less than twenty inches a year. Corn will not grow in such thirsty country, but wheat will. If there is doubt about sufficient rainfall, "dry farming" is possible. "Dry farming" plants wheat only every other year. In the intervening year the land lies fallow and is continually harrowed in order that the soil may catch and hold each raindrop and store the extra moisture for the next year's crop. Such methods push agriculture right out to the edges of the sagebrush desert. Sometimes there comes a series of extra-dry years. Then great sections of the wheat belt turn into a "dust bowl," the soil is blown away in storms that darken the sun at noon, and thousands of "dry farmers" have to apply for public relief.

Wheat farming, as Americans do it, is machine farming. The symbol of the process is the "combine," the largest agricultural machine in the world. A combine is a combination of a harvesting machine and a threshing machine. The wheat comes off the stalks and out into the waiting trucks which haul it to the railroad elevator, all in a single operation. There are

no shocks of grain, no piles of straw and no barns full of sheaves in the wheat country.

Such a heavy machine as a combine has to be worked on level ground. The wheat lands are level as a pancake for hundreds of miles. A combine also is a mass-production instrument. It does not pay to own and use one on less than a thousand acres. Thus wheat farms are really ranches, including what an Easterner would reckon to be half a county.

This kind of agriculture has a strong element of gambling in it. On the one hand the farmer bets against the weather, which may bring perfect crops or almost none at all. On the other hand he bets against the price of wheat which is the most sensitive of world barometers. A change in the trade policies of Russia, a threat of war in Europe, or an increase of grasshoppers in Australia will make wheat prices jump or sag beyond the wisest calculations. Moreover, on a wheat ranch there is nothing else but wheat. The price at the grain elevator times the number of bushels is the sum of the year's income. The wheat lands therefore shift from boom years to beggar years with unpredictable irregularity.

Despite the vast extent of the wheat acreage there are remarkably few people in the business. The clumps of cotton-woods that mark the homestead are scattered far apart on the endless plains. The low weather-beaten buildings house a farmer's family and a half dozen farm hands. It is machines rather than men that work the land. So the distance between next door neighbors will be two or three miles, and the nearest village may be twenty miles away.

There is a pioneer quality about the wheat lands. The ranches are new; the people are new. The great distances make luxuries rare and conveniences expensive. The winters are bitter cold, the summers blazing hot. The air is thin; the skies are cloudless; and the wind sweeps forever over the plains. In such surroundings men and women become sturdy, reckless and expansive. When a traveler has crossed the rooth meridian, out of the corn fields into the wheat ranches, he is "out where the West begins."

The Cattle Country

Beyond the wheat lands lies the cattle country. Indeed the wheat lands themselves were part of the cattle country in the golden age before dry farming was invented, when Texas longhorns bellowed and stampeded on the open range.

The cattle country is somewhat limited and more prosaic. The centers of it are the mountain states—Montana, Wyoming, Colorado and New Mexico. The ranches nowadays are duly fenced with barbed wire, although a single ranch may still include ten thousand acres. In a sense the cattle country is misnamed, for there are far more cows in New York or in Wisconsin than there are or ever could be in Wyoming. In a land of little rainfall the grass is inevitably thin. More than a dozen cows to the square

mile would result in overgrazing. The most striking impression of the cattle country for most visitors is the difficulty in discovering any cattle.

Large sections of the cattle country have been occupied by sheep in recent years. Sheep can flourish in pastures where a cow would starve. They nibble the grass right down to the roots and make an ample dinner on the coarsest weeds and shrubs. The driest, roughest pasturage, therefore, becomes sheep country.

Despite the inroads of sheep herders and dry farmers there remains a half million square miles of genuine cattle ranches. There are still some cowboys who ride their mustangs with chaps and high-heeled boots. The milling herds are still roped and branded in the old corrals. Yet the cattle nowadays have lost their long horns and are heavier, less agile beasts than were the steers of the old "Wild West." A good share of them, too, now spend their last days in the narrow pastures of the corn belt, being fattened for the market.

The secret of the cattle country is low costs. The land itself is cheap, less than ten dollars an acre. There is almost no expense for feed—the cattle find their own. There is no cost for barns or other shelters. When winter blizzards come, the cowboys guide the herd into some sheltered coulee and trust to luck that not too many cows will perish in the storm. The total expense of delivering a prime yearling at the railroad can be kept down to at most twenty dollars.

Life on the cattle ranges is still the most masculine and outdoor occupation in the nation. The cowboys live together in a long, low bunk-house. Their "chow" is chiefly canned goods brought in from town some thirty miles away. Their work and their play is done on horseback; a cowboy walking on the ground is somewhat of an awkward curiosity. They still play poker and ride into town for a Saturday night jamboree. Even the ranch superintendent, who is married and responsible, is probably an ex-cowboy and understands the gaunt, quick, reckless ways of the "wide open spaces."

Irrigation

The last of the great farm areas in this country is, strictly speaking, not an area at all. It is a series of oases scattered from the Great Divide to the Pacific Ocean—the irrigated lands.

With the exception of the western edge of Oregon and Washington, the whole of the Far West is short of rainfall. The soil itself is often marvelously fertile; but only cactus and sagebrush grow upon it because of lack of moisture. The problem is to bring the water to the land from the melting snows of the high mountains. Irrigation usually is possible only in the valley of a snow-fed stream.

Some of the irrigation projects are big government jobs with dams two hundred feet high, feeding water to fifty thousand acres. More often the

water comes from private, local systems operated on a neighborhood basis. In either case the water has to be stored in reservoirs, carried through canals and sub-canals, and rationed out to each farm by acre-inches. The farm itself has to be ditched and graded in order that the entire field may moisten evenly and not a single precious drop be lost. To an irrigation farmer the hour when his water is let through is the critical moment of the week.

Irrigation farmers escape another variable that harasses other forms of agriculture. They can be sure of their sunshine. They will have almost nothing but sunshine throughout the growing season. Here is the chance for marvellous results in the way of controlled agriculture. The Salt River Valley in Arizona gets as many as six crops of hay a year from its alfalfa lands. The great irrigation districts of California can beat the world in the production of lettuce, tomatoes, peaches, prunes, oranges, dates and a multitude of other fruits and vegetables. The interior of Washington and Oregon goes in for irrigated apple orchards on a grand scale. Phoenix, Arizona, ships out irrigated cantaloups by the trainload. Melting snow through dams and ditches makes "the desert blossom as the rose."

But irrigation is heavily expensive. There are the water rates, the costs of grading every field at the proper angle, and the prices of the lands themselves running as high as \$300 an acre. Only extra-special crops will pay such charges and produce a profit. These special crops are out-of-season fruits and vegetables for the luxury markets of the East, or else the same fruits and vegetables produced in super-quantities of extra quality for the great canneries of California. Irrigation lands run heavily to market gardening.

Fruits and vegetables have a peculiar labor cycle. The planting, cultivating and spraying is fairly skilled work done by a few people. Harvesting, on the other hand, has to be done entirely by hand and in a terrific hurry during the few days when the crop is at its ripest. This means a sudden, brief demand for a mob of unskilled labor.

This unskilled labor comes largely from the bands of migratory workers who move every two or three weeks from the lettuce fields to the raspberry patches to the peach orchards, as each crop comes into its prime. These people are a homeless throng of Mexicans, Orientals and dispossessed Americans. When they arrive to do the picking, they are warmly welcomed by the farmer. Their help is needed desperately, and the more there are of them the merrier. Two weeks later the farmer is entirely through with them. He wants them to move on. If they do not move, they may be encouraged to depart with shotguns. No one community is responsible for the health of these casual laborers, or for their standard of living, or for the education of their children. They wander in and out, worried and bedraggled, unknown and forgotten.

The permanent irrigation farmers are by contrast very solid citizens. They live in fairly compact communities in houses that are ample and quite citified. Some of them are millionaires ruling great fruit ranches with titles running back to Spanish times. Most of them are capitalists, at least in a small way. To be the proprietor of such a "factory on the land" as irrigation involves, requires wealth and executive ability in sizable proportions. When the Associated Farmers of California meet, you see a gathering of well-groomed, aggressive business men whose views are very similar to those of the big, city employers.

Variations

If an expert were to follow this bird's-eye view of American agriculture, he would be troubled by dozens of exceptions and omissions. The richest wheat lands in the country, he would say, are in the German counties of southeastern Pennsylvania. The early market gardening business flourishes extensively in unirrigated Florida and in the Carolinas. There are "mountain white" areas in the Ozarks as well as in the Appalachians. The Willamette Valley, which is the heart of Oregon, closely resembles the farm lands of New York State. How can you say so much about grass without mentioning the finest pastures of all, the Bluegrass region of Kentucky? The only excuse for overlooking these and many other variations from the general pattern is that ours is a very large country and this is a very short chapter.

What we have been trying to establish is the extremely wide variety of agricultural conditions in the United States. We have farms which are amazingly old-fashioned, using no machinery at all. We have other farms which are so completely mechanized that they resemble factories and their barns are little more than garages and machine shops. We have many little farmers who make their livings out of their own land, each with the help of one hired man and the members of the family. We have other farmers who are feudal lords ruling huge estates with hundreds of tenants or employees. There is a ranch in Texas which is a county, and the county court is held in the ranch house. There are self-sufficient farmers who produce almost everything which they consume, and consume almost everything which they produce. There are "cash crop" farmers who buy all of their necessities and pay for them with the sale of their one product. There are dairy farmers who eat margarine instead of butter, and pig farmers who buy their bacon from the butcher. All of these contrasts are related closely to the equally great contrasts in natural conditions. The land and the weather make—or break—the farmers.

Perhaps we can thus keep free from the glib error of the city editorials which speak of *the* farm problem. The farm problem is not a single problem but a confused and variegated mixture of problems. Certain statements may, it is true, be applied to almost any form of agriculture. Some of these

statements will be made in succeeding chapters. But there are many other statements about rural problems which mean approximately nothing unless they are applied and limited to a single region, state, or even to a single county.

The early New Englanders believed that the soil of the western prairies was unfertile because it grew no trees. Some modern generalizers about rural problems are equally provincial.

CHAPTER 35

DOES FARMING PAY?

The question as to whether farming pays is of vital interest not only to every farmer but to every loyal citizen as well. Agriculture is, as we have said, a basic element in the national welfare. But if agriculture has to be conducted at a continuous financial loss, the time may come when we shall have little or no agriculture.

This is the plight to which the people of Great Britain have been reduced in recent years. The lack of home-grown foodstuffs is a very serious handicap, especially in time of war. Only in some distant future when all nations are united in a single international state, will it be safe for any people to neglect the sources of their food supply. Under present conditions at least, it is vitally important that farming in the United States should produce at least a moderate profit for the farmers.

Recent years have given rise to grave concern in this whole matter. The total farm income in this country dropped from 17 billion dollars in 1919 to 12 billion in 1929, to 6 billion in 1933. The figure had climbed back to 9 billion by 1938. Of course the 17 billion of 1919 was an all-time high due to the World War; and of course total income in any year has to be compared with total expenses for the same year in order to determine what, if any, were the farmers' actual profits. There is good reason for believing that, as farmers' income fell, farmers' expenses also fell. But the expenses did not fall nearly as fast or as far as did the income. It has been painfully evident that many American farmers in the last decade were not making decent livings.

Hidden Costs and Hidden Income

When we come, however, to the question as to just which farmers are losing, or making, money and how much, the problem becomes complex and obscure. Many farm owners are poor bookkeepers. They may keep a close account of cash receipts and cash expenditures; but they fail to reckon carefully certain hidden costs and hidden income. These hidden items are very real and often very large.

The hidden costs are what a manufacturer would call fixed charges or overhead expenses. First among these is the value of the land. If a wheat farmer uses up the fertility of his soil, or if his land is subject to erosion, that is a real expense. An acre which he bought for \$30 may be worth only \$28 the next year and only \$20 after five years of misuse. This is a real loss,

as the farmer will discover if he tries to sell his property. But until he does consider selling he is likely to ignore any such depletion of his wealth.

The same is true for farm buildings, farm machinery and fencing. All these items are steadily wearing out. If cash is spent for replacement or repair, that cash will be included in expenses. But if no cash is spent on upkeep, the expense is there just the same. Ultimately it will appear either in the form of a decreased sale price or else in the necessity of a big investment for large-scale reconstruction in a later year.

There is, too, the item of interest on capital. The farm may represent an actual investment of ten thousand or more dollars. If the ten thousand dollars has been borrowed on a mortgage the farmer pays interest on the money at a rate of 5 or 6%. That makes him conscious of the interest item as an actual expense. But if he has put his own money into the farm, he does not think of paying himself interest on his investment. Yet if he put his ten thousand dollars into bonds or stocks, or loaned it on a mortgage on some one else's farm, that money would be bringing him an income. Farm owners fail to think of themselves as capitalists. The interest which they ought to pay themselves gets left out of their accounts.

A fourth form of hidden costs is the labor of the owner and his family. A farmer rarely pays himself a salary or allows wages for his wife and children. Yet that labor has value. The same amount of work might bring in \$3 or \$5 a day if the family were hired by outsiders. On too many farms the so-called profit for the year merely represents day-labor wages for the entire family and nothing more.

It is these hidden costs which explain the failure to abandon many run-down farms. By accurate bookkeeping these establishments are running at a loss. Yet the cash income may be enough to meet the cash outgo for this year and the year following. Only when the old place is finally put on the market for a quarter of the price it brought some thirty years ago, does the reality of hidden costs come home.

On the other hand there are two types of hidden income which may also be ignored. On many farms all of the fuel and a great part of the food supply come directly from the land. In the cities these necessities cost money—a bill of several hundred dollars a year. Yet country people take only casual account of all their home-grown cord wood, chickens, pork and vegetables and fail to add their value to their cash income.

Perhaps this attitude is a survival from the early days when all farms were approximately self-sufficing. Then the only bookkeeping that a farmer needed was his own eyes. If the meals were good, the roof tight, and the children healthy, the farm was a success. If not, the farm was failing.

The other form of hidden income is often called appreciation or unearned increment. This, until recent years, has been a large factor in American agriculture. A man would buy a piece of new land on the frontier for \$3 an acre. The price was low because the district was remote and inaccessible.

Ten years later roads had been opened, other settlers had moved in, markets had become available, and the value of the land had risen to \$30 an acre. Here was a profit of 900% without any effort at all on the part of the owner. Such huge appreciations in farm values can be found throughout the nineteenth century. They were not at all confined to the frontier. They were particularly striking in areas adjacent to a fast growing city. Even as late as the World War there were farmers in the Middle West who sold out for twice or three times their original investment, despite the fact that the land itself and the equipment had deteriorated. In a time of rising land values a man may be a downright failure at raising crops, or he may not even try to till the soil at all, and yet may manage to attain real wealth by means of unearned increment.

Markets

After a survey of the invisible items in rural economy, the ground is cleared for an attack upon the farmer's most visible and clamorous problem—the sale of his crops. How much of his products can he market, and at what price? With “cash crop” farmers especially, the state of the market is an overwhelming and perpetual concern.

“The demand for agricultural products is relatively inelastic.” This statement can be found in almost any economics textbook. What it means is that people eat only about so much whether they are rich or poor. The rich, of course, will buy more expensive food and somewhat different food than do the poor; but the quantity of food they buy will vary very little. Since the farmer's products are predominantly foodstuffs, it does not matter much to him whether the consumers are prosperous or otherwise. An automobile manufacturer, by contrast, sells to people when their income is relatively high. When wages and profits fall during a depression, the sale of cars drops toward zero, but the sale of food continues at about the usual rate. In boom times automobile purchases mount, but the grocery trade shows very little change. The food business is a stable business, and most farmers are in the food business.

A somewhat similar statement holds for clothing; and clothing also comes quite largely from the farms. The demand for shirts and sheets on which the cotton belt depends, as well as the demand for hides for shoes and for wool for overcoats, stays fairly constant regardless of the level of the public income. The farmers, therefore, face one approximate certainty in the midst of many variables—the total demand within the country for the products of agriculture is not likely to go up or down to any great extent within the next few years.

Yet there are certain long-time trends which are affecting slowly the demand for what the farmers raise. One of these trends is the growth of population. The United States until recently has been doubling its population about every twenty-five years. This was an enormous aid to the farm

market. The more mouths there were to feed, and the more backs there were to clothe, the greater the demand for agricultural produce. Today our population growth is slowing down. With our present birth and death rates we will probably stop growing altogether in another twenty years. The recent census figures are definitely discouraging from the farmer's point of view.

A second factor is the gradual change in the living habits of the people. As cities grow and men and women spend their lives indoors at desks, the character of meals is altered. People eat less meat and bread and other solid foods. They want more sugar, more milk and greater quantities of fruits and vegetables. Vitamins are a serious concern for city dwellers; so is the prevention of constipation. Urban workers also wear less clothing than their forefathers. Steam heat destroys the value of long flannel underwear and numerous petticoats. The modern woman's travelling bag hardly weighs a third as much as did the Saratoga trunk of the "gay nineties."

All of these changes recoil upon agriculture. They account for the great increases in market gardening and in dairying. They help to explain the recent overwhelming surpluses of such old-time staples as wheat and cotton. Each shift in habits of the city dwellers appears somewhere as an increase or a decrease in demand for the farm products of the country.

Another serious problem of agriculture has been the gradual disappearance of the horse. The cities formerly did their hauling by horse-power. Those horses ate millions of tons of hay and oats and corn. Now that market is entirely gone. The farms themselves also used horses or mules for every type of work. Now the triple inroad of the truck, the tractor and the automobile is destroying that market also. A new cash item—gasoline—has been added to the farmer's costs; and the great acreage devoted to producing feed for draft animals has become unwanted, idle land.

An even greater shift in the farm markets has come from the continuing decline of foreign sales. The United States in the nineteenth century was the bread basket and the cotton "mine" for a good share of Europe. We sent our wheat, our pork, our beef, and especially our cotton to Liverpool and Hamburg by the million tons. That market in recent years has been steadily shrinking.

One reason for this great decline has been the competition of newer agricultural countries. Canada, Australia and the Argentine have better wheat lands than the United States and can produce at lower costs. There was a time when almost all of the earth's cotton was grown in our own South. Now more than half the world crop comes from outside this country. Brazil, Peru, Egypt, India and China are underselling us. A similar story could be told of Australian wool, New Zealand lamb and Argentine beef.

America's competitive position has been further weakened by President Roosevelt's farm program. The methods of this program will appear in the next chapter, but the objectives that concern us here have been a decrease

in American farm production and an increase in American farm prices. These aims have been in part achieved; and it is obvious that offering fewer goods at higher prices is not the easiest way of winning in a competitive market.

Perhaps there is no chance of winning anyhow because of the increasing prevalence of economic "autarchy." Autarchy is a word of German origin, meaning national self-sufficiency. The policy is by no means confined to Germany. France, Italy, Russia and Great Britain have also been endeavoring to produce all of their necessities within their borders or at least within their colonies and spheres of influence. This means high tariffs, import quotas, exchange restrictions, the use of substitutes, and any other practicable means of cutting down imports of raw materials from America or elsewhere. Underneath these drives for autarchy lies the fear of war. Until that fear dies, foreign sales for American crops seem doomed to dwindle.

All in all the future of our farmers' markets seems moderately dark. The changes come rather slowly; but the trends are for the most part downward.

There are, however, two or three rays of hope in the picture. One of these is the prospect of discovering entirely new uses for agricultural products. Cotton seed, for instance, used to be thrown away. Now it is in real demand as a cooking oil and as a food for cattle. Cotton lint can be made into rayon, and rayon is a growing industry. There are programs for using cotton thread for binding twine and for burlap bagging. Cotton cloth has been laid down by the mile as a binder for tar roads. Milk has possibilities as the basis of some of the new plastics. Alcohol distilled from corn can be used to run our motors if the gasoline supply runs low. The soy bean is hailed in some quarters as the savior of agriculture. It has dozens of commercial possibilities running all the way from paint to doorknobs. This recourse to pioneer inventiveness is the traditional American approach to any problem. There are chances that it may, in part at least, succeed.

Another ray of hope lies in a gradual and permanent increase in the American standard of living. If the incomes of the lowest third of our people were definitely increased, these people probably would use more milk and butter, more fruits and vegetables, and possibly more meat. The poorer families need these foods for their own health, and all signs indicate that they would buy them if they could. Such an improvement would delight the dairymen and the market gardeners. On the other hand, more meat might mean less bread and a decline in the demand for wheat; more butter would decrease the sale of lard or margarine and influence the price of hogs. From the point of view of agriculture as a whole, such a solution—good as it is in terms of the general welfare—might amount to little more than robbing Peter to pay Paul.

One other outlet for farm surpluses has sometimes been hoped for in

a shamefaced sort of way. That outlet is war. Armies are tremendous wasters, both of their own supplies of food and clothing, and of the farm lands on which they battle. War, therefore, ought to boost farm markets and farm prices. It has done so, strikingly, in the past. Whether the war involved America or was fought by other countries, the demand for all of our farm products soared. The European war of 1939 appears to be the one exception to the rule. Blockades and a shortage of ships cut our exports of farm products even below peace-time levels. Nonetheless another war, especially if the United States were involved, might well use up all of crop surpluses and put the farmers once again "on easy street."

Armed conflict has, however, one very serious defect as an economic stimulus. It is temporary. When peace is made, the agricultural markets slump again, perhaps to lower levels than before. A cynic has proposed a moderate-sized, permanent American war as a complete solution of this nation's agricultural difficulties. The implications of that sad suggestion furnish food for thought.

The Middlemen

When real "dirt farmers" argue at the Grange Halls and the filling stations over the problem of their markets, they are likely to approach the matter from a distinctly different angle. They do not think so much about the ultimate consumers of their goods. What worries them and angers them is the high profits of the middlemen. Out of the ten cents the housewife pays for a loaf of bread, the wheat farmer gets less than two cents. The extra eight cents goes to the middlemen. On other types of foodstuffs the spread between the price on the farm and the price at the grocery is not nearly as striking. But whether the middlemen's share of the consumer's dollar is high or low, the farmer always feels instinctively that it is unfair. This is probably the most controversial question in all agriculture.

As the farmer sees it, both he and the consumer are caught in the grip of three groups of monopolists. The first group is the railroads. For fifty years the farmer shipped almost all his crops by railroad. There usually was just one line available for him and that line charged "what the traffic will bear." Freight rates seemed to be as high as possible, just one cent a hundred-weight below the point where the farmer would give up and not attempt to ship at all.

Actual railroad charges have always been too complicated for the ordinary human mind to understand. They vary according to the commodity, the amount of the commodity, the form of packaging, the length of haul, and the points of destination and departure. To correlate these volumes of figures with the even more complicated records representing the expenses of a railroad is a job for super-experts. In recent years this has been the task of the Interstate Commerce Commission. Yet even this hard-working body has largely accepted the differential rates which were

established earlier, and has never been able to give a completely satisfying answer to the farmer's old complaint that freight charges are monopolistic and unfair.

Lately, of course, the farms have had available a rival form of transportation. The network of hard roads now covers most of the North and Middle West, and is spreading through the Far West and the South. A farmer who owns a truck and lives on an improved highway can ship his own produce where and when he pleases. The fruits or vegetables or milk or cattle move directly from the barnyard to the city market. Yet there has been as yet no clear indication that the farmers make more profits through the use of trucks or that city customers get lower prices.

The second monopoly which irks the farmers is the buyers. The buyers may be wholesalers or jobbers or the representatives of manufacturers. It depends upon the product. In any case the buyers are relatively few in number, strong in financial resources, and often have some sort of working understanding with each other. The farmers on the other hand are very numerous, short of capital, and too scattered to coöperate effectively. When the crops are sold, the bargaining is unequal. In fact there is very little bargaining at all. The buyers set the price; the farmers have to take it or leave it. Usually the farmer takes the price since he is short of money and cannot afford to wait. In the meat business, for instance, the four big packing companies announce the daily prices for steers and for hogs. By what apparently is a sheer accident, each of the four companies announces the same prices. If a definite agreement to fix prices could be proved, the four concerns might be sued under the anti-trust laws. But as long as the arrangement is on a vague sort of "follow the leader" basis, no charges can be brought. This type of situation, involving what are called "administered prices," is not limited to the meat market. The great tobacco companies follow similar policies. So do the nation-wide milk distributors. Whether the resulting payments are unfair or not is hard to say. But it is clear that the individual farmer has very little voice in determining such prices.

The remedy, from the farmers' point of view, is organization. Ten thousand farmers acting as a unit might be a match for the big buyers. Real bargaining would then take place, and the prices would be based on a two-sided compromise.

One form of organization is a farmers' union. The idea is similar to that of a labor union. Collective bargaining with the buyers on the part of a large group of farmers is the aim. The weapon to be used in the negotiations is a strike. If the buyers offer too low prices, all the farmers suddenly refuse to sell their products. This device has been developed farthest in the dairy country. A sudden stoppage of the flow of milk will immediately set the city consumers on edge, and a price rise can be forced in the hot light of public indignation. With less perishable commodities a strike is

less effective. If the wheat farmers should refuse to sell, months would elapse before the nation would run short of flour or bread. There are, therefore, no unions of wheat farmers.

The alternative form of organization is a marketing cooperative. A large number of producers turn over their entire crop to a central organization which they themselves control. The organization grades, packs, ships and sells the product. The profits are divided in proportion to each man's production. These marketing coöperatives are sometimes brilliantly successful. The lemon orchards are an example. All the lemons in the United States are grown by a few hundred men in Southern California. All these men belong to a single marketing coöperative. With the aid of a high tariff which excludes Italian lemons, that little group has a monopoly in the United States. Throughout the depression lemon prices continued steady and high.

When only a few hundred people are involved, unity is easy and effective action possible. Mobilizing a half million wheat farmers, however, is quite a different story. They are too numerous, too scattered and too individualistic. About a third of the farmers of America are members of some sort of marketing coöperative. Yet no one of these organizations has as yet succeeded in effectively controlling the market for one of the big staple crops.

The third middleman whom the farmer roundly damns is the speculator. The ways of the speculator are quick and devious. What he does is often partially concealed and always hard to measure.

Cotton, sugar, wheat, corn and the lesser grains are bought and sold in thousand-dollar lots on "organized exchanges" in the great cities. The farmer has nothing at all to do with these transactions; yet it is his crops that are being played with. Big buyers sell to other big buyers or to speculators. A speculator, strictly speaking, is a man who buys with no other purpose than to sell, presumably at a profit. A speculator does nothing to or with the grain or cotton that he owns; he rarely even sees it. He may buy a million bushels at 10:30 A.M. and sell at 10:40 A.M. He may sell grain which he has not yet bought, taking what is called the "short" side of the market.

There are theorists who offer an elaborate justification of this business of speculation. They argue that it stabilizes the market, discounts losses and minimizes risks. Yet other staple articles—tobacco, for instance—manage to move through to the consumer quite successfully without exposure to such speculation on an organized exchange. To the direct mind of a farmer the whole procedure seems to be a form of gambling; and the gamblers often are obtaining handsome profits which come out of someone's pocket.

There is nothing that a farmer acting individually can do about the situation. His only recourse is through some sort of control from above by officials of the government. The great commodity exchanges are now

subject to considerable regulation by the Secretary of Agriculture. Yet speculation still goes on, and at least the speculators themselves have no doubt of the legitimacy of their activities.

Planning What to Produce

There is another side to the problem of making farming pay. This is the question of what, and how much, to produce—the so-called supply side of the market. Here the farmer is not quite so much the victim of forces beyond his control. He can determine within limits what he will do with his fields. If he can make no money out of dairying, he may sell his herd of cows and start a flock of sheep. If the price of corn has tumbled, he may shift to oats or to potatoes. In so doing he is carrying out the classic formula of a supposedly free market. When the price of any article falls, some of the producers of that article are supposed to stop producing. Then the supply of that article is reduced proportionate to the reduced demand, and the price will rise again. The “law” of supply and demand applies to agriculture in a general way as it does elsewhere. Yet agriculture is unusually slow and awkward in complying with the “law.”

For one thing the farmer has always to reckon with the weather. He may curtail his acreage of wheat in response to a curtailed demand. Yet the rains that year may fall exactly right and he may find himself presented with an extra-heavy crop as large as he would normally obtain from twice as large a planting. At the same time other farmers are surprised by similar bounty. The intention to reduce the crop has failed, the markets are flooded, and prices may fall still lower. Or the farmer may respond to a rise in wheat prices with a program for increasing acreage. Then comes a drought. The price of wheat is still high, but the farmer has no wheat to sell. With a possible exception for irrigation, there is no type of agriculture which is not abjectly dependent upon the weather. As the more pious nineteenth century put it, “Man proposes but God disposes.”

There is, too, a time lag in all of a farmer's decisions. If he is producing field crops, his choice as to what to raise is limited to the few weeks of planting time in early spring. Once the seed is in the ground he cannot change his mind again until next year. In the intervening months prices may shift terrifically, but the farmer stands committed. The adjustment of the supply to the demand is at best an annual affair in agriculture.

The livestock men have an even greater time lag. It takes at least a year and a half to produce a marketable pig, counting from the date when the female is fertilized. The period for cows is two years and a half. The process of adjustment is so awkward that it never reaches equilibrium. With high prices for pork, the farmers plan more pigs. When these pigs are ready to eat, there is a surplus of pork and prices fall. The farmers then plan fewer pigs. When these pigs are big enough to kill, there is a shortage of pork and high prices, but the farmer has only a few pigs

to sell. This is the well-known "hog cycle." It catches the hog farmers both coming and going.

Orchard crops have the longest lag of all. Five years is the minimum before a fruit tree begins bearing. It will be another ten years before anyone would dare suggest that that fruit tree be cut down, no matter what may be the level of fruit prices.

The inelastic quality of agricultural supply has still another cause. The natural conditions place strict limitations on the choice of crops. The wheat ranches in a good share of the West have the choice of raising wheat or raising nothing. The rainfall is too low for any other crop. The rocky hillsides of New England have the alternative of cows or sheep, but there is no chance of growing any kind of grain at a profit on such "Puritan" soil. The fat lands of the upper Mississippi Valley are perhaps the only part of this republic where a large variety of choices is available for agricultural adjustment.

Even if all the difficulties due to inelasticity of farm production could be avoided or surmounted in one way or another, we still must face another basic problem in the matter of agricultural supply. This is the great advance in scientific farming and its consequences. All along the line the technicians have been at work increasing the yield per acre and the yield per farmer of the American countryside. Cows give more milk than they did thirty years ago; cornstalks bear more ears of corn and there are more kernels in each ear; the new varieties of wheat will stand more punishment from drought or rust or insects and still be heavier with grain at threshing time than in the earlier years; hens lay more eggs, sheep bear more wool, and so on and so on. The estimates indicate that the total yield of American agriculture has approximately doubled in the last half century with no great change either in the number of workers or in the acreage in use.

This, of course, means progress and an increase in the national wealth. But what it means to individual farmers is a different story. The net result has been a concentration of production in the hands of the better, or the luckier, farmers. Ninety per cent of the farm products are grown by 50% of the farmers. The other 50% of farmers grow only 10% of the products. To put the matter another way, the men who have the better lands, the larger capital resources and the keenest initiative in trying out new methods are crowding out the little fellows. If there were an expanding market for farm products, the picture might be different. But with demand as stationary or declining as it seems to be, each improvement in technical methods means that some big, successful farmer takes away part of the market and part of the income from another less successful farmer. All over the country these little, less successful farmers can be found, still hanging on but gradually losing out. Under the older and less scientific methods they managed to do fairly well. Against the

newer high-powered competition in a limited market, they simply lack the means for their own survival.

There are theorists who explain that these so-called marginal farmers ought to pick up and leave their farms. This is Spartan medicine. Farms are not built in a day or in a year. They represent a life's investment of labor, capital and long-range planning. Farms, too, are homes as well as enterprises. Moving a farmer and his family means tearing them up by the roots. Once uprooted, they may never manage to take root again. So the marginal farmers cling to their farms, oftentimes until they die.

Direct Costs

Underneath all the other considerations lies the matter of a farmer's direct costs. These are by no means hidden and unrealized. They must be met regardless of what happens to farm markets, or the profits of the middlemen, or the supply of agricultural goods. There are gasoline and oil and tires to be paid for, seed and fertilizer to be bought, clothing and school books and doctor's fees to be provided for the family. Such items are nowhere near as variable as is the farmer's income. Wheat may drop from \$2.00 to \$.50 a bushel while the cost of overalls decreases only from \$2.00 to \$1.75 a pair. Prices of manufactured goods and of agricultural products ought to rise or fall together. The fact that they do not do so is a problem for the economists and an everlasting puzzle for the countryside.

There is a second set of direct costs which are even more resistant. Taxes, insurance payments and the interest on farm mortgages do not decrease at all when other prices tumble. Taxes during a depression may even be increased to meet the heavy burdens of relief. There is an enormous difference to the farmer between paying \$100 to the bank or to the tax collector when wheat is up to \$2.00, and paying the same \$100 when wheat is down to \$.50. The amount of money is unchanged but the real cost to the farmer is quadrupled.

Here we have the explanation for the farmers' repeated enthusiasm for cheap money and inflation. Inflation means rising prices. Some prices go up faster than others. Agricultural prices usually lead the way; prices of manufactured goods lag behind; interest, insurance and taxes do not change at all. Under inflation, therefore, the whole picture of a farmer's direct costs is reversed. His income mounts much faster than his outgo. His pocketbook begins to bulge. For one hundred years the rural areas of the United States have always plumped for cheap money and inflation whenever the issue has appeared in politics.

On the other hand, in depression times when prices fall, we sometimes get a strange phenomenon that puts the final quirk into agricultural economics. The farmers may deliberately and definitely *increase* production just because prices are *low*. This is flying in the face of all sound doc-

trine. But what is a farmer to do? He has his direct costs to meet. He sees no chance of avoiding or reducing those expenses. His normal production will not bring him in enough to meet those bills. The only move left for him to make is to sell more than he has ever sold before. So he works extra hard and adds to his total output. In so doing he further floods the market and further depresses prices. President Hoover's Secretary of Agriculture, Mr. Hyde, made a direct appeal to the farmers to reduce production in view of the low state of the farm markets. The farmers answered this appeal by adding to production. In such a topsy-turvy state of things it seemed high time for the government to intervene.

Conclusion

The conclusion of this chapter on the financial side of agriculture is indecisive. The answer to the question, "Does farming pay?", is, "It depends upon the circumstances." There have been times—for instance, the period of the first World War—when almost any fool could make a good farm pay high dividends. There have been other times, such as the early 1930s, when only the shrewdest and most scientific practices would save the best of farms from bankruptcy. What the future holds for agriculture depends on all the variables we have described, and also on a new weighty variable—the policy of the national government.

CHAPTER 36

THE FARMERS AND THE GOVERNMENT

The political wiseacres in Washington will sometimes tell you, "The farmers run the government." This certainly is an exaggeration. Yet farmers do have great power in politics—at least as great as is the influence of the labor union or of "Wall Street" or of the World War veterans. Whenever the farmers can agree on what they want, the government is very prone to give it to them. Compare, for instance, the Department of Agriculture in Washington with the Department of Commerce or the Department of Labor. The Department of Agriculture was created first, and has always had the largest appropriations and the widest range of functions to perform. Or consider the great recovery measures of the Roosevelt administration. Out of all the programs for restoring the prosperity of business, labor and agriculture, the one program which hands out cash as a straight gift from the treasury is the A. A. A., the program for the farmers. The farmers in the fiscal year 1939 received over seven hundred million dollars from the government, primarily as a reward for growing fewer crops than usual. The farmers, it would seem, rank with the American Legion in their view of Uncle Sam as a perennial Santa Claus.

Farmers in Politics

There are three reasons for the firm grip which the agricultural interests have on Washington. One reason is the over-representation of the rural areas in Congress. The apportionment of seats in the House of Representatives is always somewhat out of date. The population of the cities grows; the country population relatively declines. But the census figures that record this rural-urban shift come only once in a decade, and Congress even then is loath to make a corresponding readjustment in its membership. The census of 1920 was ignored by Congress, so that by 1930 the rural-urban ratio in the House of Representatives was twenty years behind the times and very definitely distorted.

In the Senate, agricultural over-representation is far more serious. Each state has two Senators regardless of its population, and the agricultural states are thinly populated. The combined population of the agricultural commonwealths of Idaho, Montana, Wyoming, Utah, New Mexico, Arizona, North Dakota and South Dakota is less than that within the single industrial state of Massachusetts. The relative legislative power in this

case of agriculture against industry is 8 to 1. This example is perhaps extreme. Yet there is no doubt in anybody's mind that the farmers enjoy at least twice or three times more influence in the United States Senate than their actual numbers justify.

The discrepancy in political power is even greater in some of the state legislatures. Under the "rotten borough" system of Connecticut, the ratio of rural-urban representation runs as high as 100 to 1. In Georgia, New York, Illinois, Delaware and several other states there are tricky constitutional provisions designed to give some sort of disproportionate advantage to rural voters.

The second reason for the political strength of agriculture is the way in which the farmers vote. Farmers are fairly permanent residents. City people are more migratory. They move to a new town and thereby lose their voting rights for a year or two. They may be out of town on election day and fail to cast their ballots. Their political interests may be lost in the shuttle of commuting. They work and have their campaign opinions in New York; but they sleep and are expected to perform as citizens in New Jersey. So their votes are based on lack of information or else they are not cast at all.

Country voters on the contrary are almost always eligible, almost always vote, and are very likely to know whom, and what they vote for. They take more time to talk and read and listen about candidates and platforms. They are less subject to outside pressures than laborers who are afraid of their employers, or merchants who are catering to customers. Outside the "cotton belt" where poll taxes keep the poorer farmers from the polls, the agricultural electorate of the United States approaches the ideal of real democracy. The farmers take their voting very seriously; and the politicians are consequently very serious in the respect they show for the farm vote.

The third element in the picture of the farmers in politics is the agricultural lobbies. There are three great nation-wide farm organizations which act as spokesmen for the farmers—the National Grange which is conservative, the Farm Bureau Federation which is moderate, and the Farm Union which is radical in policies. Each of these organizations has paid, skilled representatives in Washington and in the state capitals to state its case and plead its cause on any issue and on all occasions. There is nothing amateur or "hayseed" about these pressure groups. Whenever they unite and are in earnest on a given question, the opposition is very likely to give ground.

Against this background it is easier to understand the multiplicity of ways in which the federal and the state governments bend themselves to meet the farmers' wishes. The farmers get state and federal aid in building rural roads; the cities have to pay the entire bill for paving urban streets. There are special grants from state treasuries to aid the rural

schools. The strictest "pure food" laws in the country are the state requirements regarding food for livestock. The city consumer may never know exactly what he eats, but bags of feed which farmers buy must carry exact statements of the amount and character of their ingredients. When industrial workers stage a strike in Youngstown or South Chicago, the police and the militia are likely to use tear gas or even guns in order to break up a picket line. But when farmers start a milk strike in New York or Wisconsin, the state police move gingerly and the pickets dump out other people's milk without restraint, because the farmers are politically important.

It is easy to exaggerate these contrasts. There have been instances in which the interests of agriculture have been consistently ignored or overridden. The long history of monetary legislation is a conspicuous example. Yet the ordinary rule in practical politics is to give the farmers their desires, provided they agree on what they want.

The Department of Agriculture

The most extensive of all efforts to appease and serve the farmer is the United States Department of Agriculture. It and its affiliates constitute one of the greatest and most highly respected administrative organizations in the world. The federal department works in close cooperation with the state departments of agriculture. Federal and state authorities combine in controlling and financing the state agricultural colleges, the state experiment stations, and the county agricultural agents. The county agents, both men and women, are in direct touch with the local Granges, the Farm Bureaus, the 4-H Clubs and every other agricultural organization. The county agents are expected to visit personally every farmer or farmer's wife who wants to see them. The network of contacts between the farmers and the government crisscrosses up and down from the huge block of offices in Washington to the last "hill-billy" in the Ozarks.

The purpose of this vast organization is to solve the farmers' problems. If the problem is wind erosion, the experts are at hand with advice regarding listing, strip planting and windbreaks. If a new insect or fungus is threatening the crops, the department throws out a long cordon of men to quarantine the infected area and searches the wide world for devices to exterminate the pest. If the farmer wants to know what crops to raise, the government will make a physical and chemical analysis of all his soils, tell him what varieties to plant and how to care for them. If a new barn or chicken coop is contemplated, the government has detailed plans available, based upon its own elaborate studies.

The woman's side of farming is covered with equal thoroughness. There are instructions as to how to can asparagus, how to paint the kitchen floor, and what to do about cockroaches. The Bureau of Home Economics of the Department of Agriculture has a famous pamphlet on the care of babies

that has been sold up to ten million copies and ranks with the "best sellers" of the world.

Information on ten thousand different items filters up and down in the agricultural world, by word of mouth and radio and printed circulars, from theorist to practitioner, from executive to voter. Probably no branch of any government on earth knows more about its field of operations or has more effective influence within that field than has the Department of Agriculture of the United States.

Farm Credit

Until recently, however, there was a line at which the government's aid to agriculture stopped short. That line lay at the edge of the financial problems of the farmer. The official agencies would give him almost any sort of technical assistance; but the question of his actual income and expenses was left for him alone to solve.

Such a policy was thoroughly consistent with the strong tradition of American individualism. Ours was a government with limited powers. Any suggestion of paternalism or of socialism was taboo. This taboo supposedly was written broad and deep in the federal constitution. Any program for giving money to the farmers or of so regulating agriculture that farmers would be sure to get some money was regarded as contrary to the fundamental law.

The first violation of this basic rule came in the matter of farm credit. Agriculture, it was pointed out, had serious difficulty in obtaining loans from ordinary banks. When loans were made, the interest charges were exorbitantly high. So the government, beginning in the Wilson administration, has developed a special banking system of its own exclusively for farmers. We now have five forms of governmental agricultural credit. The farmers can borrow to pay for their land, or to buy buildings and equipment, or to purchase seed and fertilizer, or to finance a marketing coöperative, or to hold their harvested crops out of the market until prices may perhaps improve. The loans are made on liberal terms and at relatively low rates of interest. Somewhere near half of all the agricultural lending in the country is now done by agencies of the United States government.

The wisdom of this policy is debatable. It does, of course, remove one of the farmer's ancient grievances. He can no longer complain of a shortage of capital, or of the high interest rates he pays for the use of capital. It is hard to imagine any form of credit that a farmer might need, and that he has a reasonable chance of repaying, which is not now his for the asking. On the other hand there are critics who contend that all this easy credit is itself one of the causes of the present overwhelming surplus of farm products. Easy credit helps many farmers to expand their output, and keeps alive the marginal producers who might otherwise abandon

farming. Credit, too, is just another name for debt. When a farmer gets his loan, he loves his government and praises its generosity. When the time comes to pay the interest or the principal, the same farmer may begin to hate his government, demand lower rates of interest and delay in the repayment of the principal. In the early 1900s the government loaned a hundred million dollars to irrigation farmers. Most of that money never was paid back. Perhaps a good share of the present all-embracing loans to agriculture will be similarly lost in course of time.

The A. A. A.

The most sweeping violation of the old theory that farmers were financially self-reliant came with the A. A. A. (Agricultural Adjustment Act). The A. A. A. had its forerunners in the McNary-Haugen Bill vetoed by President Coolidge and in the Federal Farm Board established under President Hoover. The A. A. A. itself was declared unconstitutional by the Supreme Court. A so-called Soil Conservation Act, with purposes much broader than the conservation of the soil, was then enacted with an eye to the Supreme Court's objections. This in turn has given way to a second and more thoroughgoing A. A. A. Meanwhile the personnel of the Supreme Court has been greatly changed by President Roosevelt's appointments; and the second A. A. A. has been accepted by the revised court as constitutional.

The present, or second, A. A. A. with subsequent amendments and additions, sets up an impressive combination of agricultural controls, all designed to guarantee as far as possible that farmers will make money. The main program is confined to the so-called basic crops—wheat, cotton, corn, tobacco and rice. There are supplementary devices for giving help to sugar, to milk, and to fruits and vegetables. Each provision of the A. A. A. was formulated in consultation with representatives of the farmers; and the administration of the Act is largely in the hands of local farm committees. For the most part the program is voluntary. A farmer may comply or not comply as he chooses; but there are powerful cash rewards held out in order to persuade him to comply.

The primary procedure of the A. A. A. is the acreage quota. Each year the Secretary of Agriculture announces a maximum acreage for each of the basic crops for the entire country. This national acreage quota is broken down into quotas for each state, each county, each township and each farm. A farmer who complies agrees to limit his planting of the particular crop to the acreage which is allowed him. In return he gets two money payments. The first is his "soil conservation" payment. This represents, in theory, the amount of fertility which has been left in the land because he did not raise as large a crop as possible. The second payment is his "parity" payment. This is designed to equalize the difference between the farmer's actual income this year and his so-called normal

income. His normal income is reckoned on the basis of the average prices of his crop in the years just preceding the World War, with an adjustment to allow for changes in the costs of goods which farmers buy.

The purpose of the whole arrangement is twofold. It aims to keep down crop production and thereby to keep up the level of crop prices. It also aims to add directly to the farmers' cash income.

Acres, however, have a tendency to get out of hand. Under favorable weather, or under the increased attention of the farmer himself, the reduced acreage may turn out a lot more bales or bushels than the Secretary of Agriculture planned. For such emergencies the government has a second control device, the marketing quota.

The marketing quota is a limit upon the amount of a basic crop which can be sold. Again this quota is fixed for the whole country and subdivided for each state, county, township and farm. If a farmer sells more than his marketing quota, he is subject to a heavy fine. Marketing quotas may be imposed only after the recommendation of the Secretary of Agriculture has been approved in a referendum vote by two-thirds of the farmers involved. If the marketing quota is imposed, it applies to all farmers whether they have complied with the acreage quota program or not.

Even this second control may not always be sufficient to maintain the level of farm prices. The market for wheat or cotton may be affected by excessive crops and lower prices in other countries beyond this government's control. There is, therefore, a third line of defense, the crop loan.

We have already mentioned the crop loan along with the other forms of agricultural credit. The main purpose of this form of credit is to bolster prices. If the market price of cotton is 7 cents a pound, and the government loan on cotton is 8 cents a pound, the producers will not sell their cotton but will rather borrow on their cotton from the government. The government holds the cotton as security for the loan. The supply of cotton offered on the market is reduced and the price tends to rise. If the market price goes up to 9 cents, the producer pays off the 8 cents he owes the government, sells the cotton for 9 cents and is a penny ahead on every pound. If the market price does not rise, the producer simply lets the government keep the cotton. This is what is known as "pegging" the price. The cotton growers get a minimum return regardless of the market. If the market falls, the United States Treasury "holds the bag."

In 1939 this crop loan system had reached the point where the government was holding out of the market an entire extra crop of cotton—13,000,000 bales, the equivalent of an average year's production. It also had acquired about a quarter of an annual crop of wheat, and about a third of a crop of corn. Nobody knew exactly what to do with these

big surpluses. So the Department of Agriculture resorted to still another device, the export subsidy.

The export subsidy means that for every bushel of corn or wheat (or sack of wheat flour) and for every pound of cotton (or yard of cotton cloth) which some American sells to a foreigner, the United States government makes a payment to that American. The payment varies according to the discretion of the Secretary of Agriculture. A cotton exporter may receive 1 cent or 1½ cents on every pound of cotton that he sells abroad. This makes it possible to offer cotton at a lower price in European markets, and so to undersell Brazilian competitors. If the scheme succeeds, it disposes of at least a part of the overhanging surplus in this country. But such schemes are likely to produce backfires in the form of comparable subsidies by other countries. "Dumping," as it is called, is not regarded by economists as a sound or permanent device for increasing sales in foreign markets.

There is also a fifth device, used in conjunction with the A. A. A., for getting rid of surpluses and maintaining prices. This is the Surplus Commodities Corporation. It buys up all sorts of farm products and distributes them free of charge to people on relief. Whenever a surplus occurs in grapefruit, prunes, eggs, potatoes or any other agricultural commodity, the corporation takes at least part of the surplus off the growers' hands. The local relief administrators for a time distributed the carloads of apples and tons of onions directly to their "clients." Now the distribution is largely done by the widely heralded "stamp plan." The relief agency hands out orange stamps and blue stamps to the "clients." The orange stamps will buy any kind of food at any grocery store. They represent direct relief, paid for through W. P. A. The blue stamps will buy only the "surplus commodities." They are financed by the Surplus Commodities Corporation. One advantage of the plan is that local grocery men now get their profit out of agricultural relief.

The cost of these donations may well be charged to unemployment. Certainly the unemployed need and use whatever agricultural surpluses come their way. But the Surplus Commodities Corporation is also pegging farm prices—not merely of the basic crops but of almost every other product of the land from apricots to yams.

A sixth procedure of the A. A. A. is crop insurance. This, so far, has been limited to wheat. If it succeeds with wheat, it may be expanded widely. A wheat grower insures his crop with the government against drought, hail and pests. He pays his insurance premium in bushels of wheat; and if his crop falls below an agreed percentage of his normal yield, the government pays him back so many bushels of wheat to compensate his loss.

Insurance is, of course, a well recognized protection against unpreventable calamities. When crop insurance is paid for in bushels rather than in dollars, it avoids any question of the fluctuation in the market price

of wheat. Private insurance companies have never offered this form of protection. If the government is a sound actuary, collecting premiums high enough to cover maximum losses, crop insurance may develop as a permanent arrangement.

A seventh feature of the agricultural program consists of marketing agreements. Marketing *agreements* apply only to *non-basic* crops. They are distinctly different from the marketing *quotas* which are used for *basic* crops. Marketing agreements are designed especially for orchard products—pears, peaches, walnuts and the like, and also for the separate “milk sheds” of the great cities.

The purpose is to limit the marketing of farm goods in cases where the limitation of production is naturally impossible. There is no way in which the Secretary of Agriculture can call for sudden increase or decrease in the number of peach trees. Nor can he reasonably recommend that 20% of the total number of milking cows be killed off, or that the total number be increased by 20% on two months' notice. Only the sale of milk or peaches is subject to direct control.

Marketing agreements vary greatly. They may undertake to regulate prices or quantities or grades or any combination of these factors. An agreement is effective only after approval by two-thirds of the producers and a majority of the wholesale distributors. Once approved it is a law enforceable by fines.

The real objective of the agreements is the same as that of the marketing coöperatives. The agreements operate through legal penalties; the marketing coöperatives rest upon a purely voluntary basis. But both devices seek to increase prices by creating what amounts to a monopoly. Whether marketing agreements will be any more successful than marketing coöperatives have been is as yet an open question.

An eighth phase of farm relief is the program for permanent removal of farm lands from cultivation. The first step in this direction was President Roosevelt's withdrawal of public lands from private entry. This meant the definite end of homesteading. Until 1933 there were still a few citizens each year who undertook the traditional adventure of the pioneers by occupying quarter sections of the public lands and obtaining free gifts thereof from the government at the end of five years' residence. The lands involved were remnants of semi-desert which could be made livable only by sinking deep artesian wells. Yet they represented an annual addition to the total number of farms at a time when there were too many farms already.

At the same time that the government stopped the transfer of public lands to private ownership it was undertaking the reverse process—the transfer of private lands to public ownership. The national authorities have been busy for at least three decades in the creation of an imposing chain of national parks, national forests and game preserves. The state

governments have been creating state parks and state forests. The land for these reserves has been largely bought from private individuals and corporations. A good share of it was timber land or waste land; but there were also many thousand acres which were or had been under pasturage or cultivation. Thus a program whose obvious purposes were conservation and recreation has also worked as a method for reducing the area of agriculture.

Under the New Deal the order of objectives has been reversed. Land has been bought up just in order to retire it from cultivation. After the land is bought it may or may not be developed as some sort of government reservation.

The results of all this land retirement look impressive on the map. Several of the Rocky Mountain states appear with almost half their total area under some sort of public ownership. Yet the total agricultural production of this vast acreage never was, or could be, large. Most of the ground is too dry or hilly or sterile to support anything more than the skinniest of marginal farms. The time may come, of course, when the government will purchase and retire big tracts of rich soil in the corn-hog belt or elsewhere. But until some good farms are withdrawn from use, any plan for land retirement will not count greatly in reducing the crop surpluses.

Tied in with land retirement is the ninth and final element of the Roosevelt farm policy—the program of rehabilitation. The Department of Agriculture has a special agency, now called the Farm Security Administration. It selects certain farmers whom it regards as able and honest, and undertakes to rescue them from poverty. Some farmers, whose present soils seem hopeless, are moved to new farms; others, whose land has possibilities, stay where they are. In either case the government extends a long-term loan to be used for fertilizer, seed, machinery, fences, buildings and whatever else seems necessary to put the farmer permanently on his feet as a successful agriculturist. Until the loan is finally repaid, the Farm Security Administration supervises the whole conduct of the farm.

The farms which are abandoned in this program of rehabilitation are added to the total of lands retired from use. To this extent the program means some small decrease in crop production. But the farmers themselves are not retired. They are being equipped to turn out better and bigger crops. If they succeed, they will thereby add to the farm surpluses. If the general object of the A. A. A. is to reduce production, the Farm Security activities seem somewhat contradictory.

From the individual points of view of thousands of marginal farmers, rehabilitation is a godsend. It pulls them out of despair and they feel grateful. Whether they will still feel grateful at the end of twenty years of payments on a government debt, with constant supervision by the county agent over two decades, is a question to be answered in the future.

Results of the A. A. A.

The scope and the variety of all these new arrangements by government for farmers seem downright revolutionary. The country people, supposedly the most old-fashioned and most independent of Americans, have become dependent in a dozen different ways upon a paternalistic government. On an average of once a week they are receiving some sort of advice or contract or proposal or cash remittance from the authorities in Washington. Secretary Wallace never tired of emphasizing that all of these arrangements contain no element of dictatorship. They are based on voluntary coöperation and democratic balloting. Such certainly is the sincere intention and the present method. Yet a comparison between the agricultural controls in the United States and those in Germany or Russia will produce food for sober thought. There is at least a danger that the average farmer's thoughts are being turned away from his main business of caring for his own fields, into the new, exciting enterprise of seeking favors and exerting pressures in Congress and the departmental bureaus.

So far at least, the new régime has been conducted with a minimum of friction and an astonishing lack of graft. The charges of maladministration and corruption that have pursued the W. P. A. and other New Deal enterprises have rarely touched the A. A. A. The local committees of "dirt farmers" apparently have estimated their neighbors' acreage and average production with speed and fairness. The swarm of county agents and administrative supervisors have been competent and courteous and faithful to their trust. The uniformity of such fine conduct approximates a miracle.

The one blot on the record is the treatment of southern tenant farmers. When a plantation owner promises the government to plant less cotton, he is likely to accomplish the reduction by dismissing some of his share-croppers. When other owners also are cutting down on cotton under the A. A. A., these share-croppers have no place to go. Or the plantation owner may divide the acreage reduction equally among his tenants. This means that all of the share-croppers have to take a cut in income when they were already barely able to survive. When the government check comes in as the reward for acreage reduction, the plantation owner probably will pocket the entire amount. The revised regulations state that a quarter of government money goes to the share-cropper. But the plantation owner keeps the books, and tenants who ask questions may suddenly be evicted. The share-croppers of the cotton belt are perhaps the most destitute group of farmers in the entire nation. They are being pushed down into deeper destitution by a program of agricultural relief.

The general level of the income of all farmers has nonetheless been definitely raised. Estimates of the amount of the increase vary according to the years selected for comparison. But it is safe to say that an addition

to farm income of at least 50% has been accomplished since the A. A. A. was instituted. Some of this gain is due to the direct cash payments from the government; but the greater part of the increase represents a rise in market prices.

This does not mean, however, that the so-called goal of the A. A. A. has been achieved. The objective as stated at the outset of the program has been to push farm prices back to "parity." "Parity" means a return to the level of purchasing-power enjoyed by agriculture in the pre-war years of 1909-1913. When the goal is achieved, the farmers' total income will be enough to buy the same amount of goods at present prices as the farmers' pre-war income bought at pre-war prices. This aim has, with the exception of one or two crops in one or two years, not yet been realized. Judged by its own standard of success, therefore, the A. A. A. is as yet to some degree a failure.

Nor is it possible to credit all of the increase in income that has been achieved to the operations of the A. A. A. Farm prices are still subject to the manifold vagaries of the weather, the sudden shifts in policy by foreign governments, the manipulations of the buyers and the speculators, and other factors which the Department of Agriculture cannot pretend to control. There are critics who contend that farm incomes would be as good or better than they are if the government had left the farmers entirely alone. Other critics accept the general program but find fault with the details. If the acreage allotments had been more or less, if the benefit payments had been higher or lower, or if the rate for the crop loans had been increased or decreased, the farmers might be more prosperous than they are. In the presence of so many variable factors, what might have happened is anybody's guess.

One general comment on the entire problem is fairly well accepted. The government has been at least partially contradicting itself. Some of its bureaus have been exerting every energy to improve varieties of plants and animals, to prevent the ravages of diseases and insects, to lend the farmers money to expand their operations. This is a "plus" program. It adds to the farm output. The rest of the government's farm experts have been devising new and better means for cutting down the acreage, raising the cost of farm products, preventing crops from being marketed. This is a "minus" program. It reduces the farm output. The "plus" program and the "minus" program tend to cancel each other. As one Georgia Negro stated the dilemma, "If gov'ment don't like all this here cotton, let gov'ment hire Mister Boll Weevil. Then ever'body else can take a rest."

It may be, of course, that this contradiction in policies is just what a great many individual farmers want. They are glad to get all kinds of official assistance in boosting their own output, and at the same time they like to see the output of all the other farmers artificially curtailed. Farm-

ers, as we said, have great political power. The presumption is that the present setup, however contrary to logic it may be, is by and large what the farmers want.

Certainly the farmers seem to want the A. A. A. We forget perhaps that the A. A. A. began as a temporary measure. It was proposed as a short-term expedient to meet a serious emergency. In two or three years at most, agriculture was expected to recover and return to its old ways. But there has been no return at all to the old ways. Instead, the variety and the extent of the controls has been consistently increased. We have reached the point at present where neither Republicans nor Democrats, conservatives nor radicals, dare to propose an ending of the cash checks flowing out of Washington or any other major step toward a return to agricultural individualism. A great tradition of the nineteenth century—the economic independence of the tillers of the soil—is now almost a myth.

CHAPTER 37

FARMING AS A WAY OF LIFE

A grave mistake is sometimes made by well-intentioned students of agriculture. They think of farming exclusively in economic terms. Farms to them are like offices or factories—establishments whose one objective is the production of a money income.

Farmers, of course, want money like everybody else, and they judge their occupation by a profit standard. But they also judge their occupation by non-profit standards. A farm, for one thing, is a home. If it is a good home, where children are happy and healthy, that is a big point in its favor. A farm, also, is part of a community. If the neighbors are good friends and a man stands well in their esteem, then the farm is a good place to be despite a meagerness of income. A farm, too, is a thing of beauty. The view from the back pasture or the glint of sunset on the waving grain is something to show visitors and to cherish personally in an unspoken but deep-seated way. There are several things about a farm which money simply cannot buy. This is the essential meaning of the phrase which country people understand—"Farming is a way of life."

Farm Families

The average adult male in a city leads a double life. He spends his mornings and his afternoons at work, his evenings and his holidays at home. His work and his home are separate worlds. In one world he gets his income in an atmosphere of rivalry or ruthlessness. In the other world he spends his income in the warm circle of his family and friends. As a father and a neighbor he reveals quite different traits than he displays down town. Like Dr. Jekyll and Mr. Hyde, he plays essentially two parts in life.

To a farmer such duality is quite unknown. His job and his home, his work and his play are intimately twined together.

One reason for this unity is that a farm requires continual attendance. Growing crops are like young babies. Almost anything may happen to them if they are not watched. Dangers from frost or storm or insects can be warded off only by quick action. A few hours' absence may spell ruin. Livestock is even more exacting. Morning and evening it must be fed and watered. In the dead of night a dog may get among the sheep

or a weasel invade the chicken yard; and woe to the farmer who is absent when the old sow farrows or a cow has dropped her calf.

Like a doctor or a fireman, a farmer must be continually on call. Hence the presence of a farmhouse on or near each farm. If a farmer is to have a family at all, the family must dwell with him adjacent to his job.

A wife, moreover, is an extremely useful partner in an agricultural enterprise. A bachelor in a city can get along quite well with the assistance of a restaurant, a landlady and a laundress. But a bachelor on the land is stuck with the whole job of his own housekeeping at the end of each day's work in the fields. The field work itself is partly woman's work. There are many thousands of farm wives in America who can rake hay, milk cows, or hoe long rows in the summer sun with as much skill and almost as much endurance as their husbands. Farmers, therefore, marry early. If they lose a first wife they are in haste to find another. And they are likely to fall in love with healthy, sturdy women who can hold up their end of the farm work.

On most farms children also are a great asset. Unless the whole process of cultivation has been mechanized, as it has been on the wheat ranches, there is plenty of field work which youngsters of ten or twelve can do; and a sound, willing boy of sixteen or twenty is better labor and cheaper labor than any hired man. Children, moreover, are not nearly so expensive to maintain on farms as in a city. Food is cheap and plentiful; they can sleep in the attic if necessary; clothing in the summer months may be nothing more than a pair of overalls or jumpers; there need be no expense at all for recreation. Quite apart from the natural desire for offspring stands the fact that children in the country are financial assets. They more than "earn their keep." Hence the high birth rate on farms, and the especially high birth rate on old-fashioned, unmechanized farms where the uses for child labor are most numerous.

The result of such circumstances is an integrated family. The sex passion and the desire for parenthood are woven in with the struggle for survival and the ambition to succeed. The farm is part of the family; the family is part of the farm. The small boys know and care about the price of wheat or cotton, the interest on the mortgage, and the other details of their father's enterprise. The girls are their mother's helpmates in the kitchen and the barnyard and the fields. Husband and wife are in almost hourly contact with each other and with the youngsters. Everybody works at home together.

In the close circle of a country homestead, age distinctions lose part of their meaning. There is a pooling of the wisdom of age and the enthusiasm of youth. Grandfather goes fishing with the boy of ten; mother is a faster picker in the blackberry patch than any of her daughters; the sons learn how to calve a cow and roof a barn and fix a tractor by helping father and watching how he does it. A great mass of skills and

attitudes and practical philosophies is handed on to the next generation almost unconsciously. A farm family is, in a very practical and fundamental sense, an educational institution.

The impact of city styles and standards is, of course, breaking in on the traditional unity of country families. The young people especially quarrel with the old ways. They aggressively assert their preferences for coca-colas, "hot" jazz in roadside dance halls, and many other recreations which the old homestead never can supply. Many farm youngsters cherish high ambitions to become lawyers or aviators or private secretaries to the big executives. Such ambitions involve leaving home for years of training in some city. Once such youngsters reach their goals as specialists, the family tie is really broken and farm ways are looked down upon with amusement or contempt.

In the last two decades, however, the pull of the cities has not been nearly as strong as it once was, or as it might be. The reason is a lack of money. Everything citified, from coca-colas to a university Ph.D., requires money. The farm families simply have not had the money. So many of the young people have had to give up their impulses and their dreams, stay at home, and ultimately become farmers and farm wives as their parents were before them. The census figures indicate a partial backing up of the earlier rural-urban flow of population. The depression has been, for good or ill, a powerful force in preserving the unity and continuity of life upon the land.

It may be that this way of life is not quite so beautiful or wholesome as readers of regional novels or midsummer vacationists would like to think. It certainly seems dull and heavy with routine. Doing the same chores and seeing the same faces day after day, year after year, makes country people pathetically eager for any sort of interruption or diversion. Picnics, weddings and even funerals are welcome events; a place in the family car for the weekly trip to town is dreamed of and fought for; a revival or a circus or a county fair is a soul-stirring experience. A certain poverty of thought and emptiness of the imagination is part of the price which a farm family pays for its security and intimacy.

There is, too, a chance for inbreeding in a mental or moral sense. This may be either good or bad in its results. The dominant characteristics of the parents are likely to be reproduced or even intensified in their children. Father and mother are almost the only grown-up models that the children have to imitate. A streak of bitterness or meanness may thus be handed down for generations in one family; in another family the tradition of generosity or optimism may be equally intense. A family name in a rural neighborhood is far more than a label. It may be a proud banner to live up to, or a disgrace to be lived down.

After everything else is said, we all tend to regard the home as the most basic of American institutions, and to think of strong home ties as

guaranteeing the moral fiber of the nation. Home ties in the country are certainly more numerous, and probably are stronger, than they can be in the cities. The rural divorce rate is as low as the rural birth rate is high, and there is a wealth of other statistical evidence pointing in the same direction. Insofar as a vigorous and unified home life is really an essential for human welfare, the farm families may be perhaps regarded as the backbone of the United States.

Farm Distances

A second major factor in agricultural society is distance. Every element in a farmer's life is at a distance from every other element. The fields are far apart from each other and a long way from the house and barns. Part of every farmer's day is spent "commuting" between one part and another of his job. Each farm home is at a distance from the next. A visit to the next door neighbor may mean a half hour's walk in New England or an hour's gallop in Wyoming. The nearest village is at a greater distance. The general store, the railroad station, the doctor, the church, the high school and the movie theater may all be five or twenty miles away. The "big city" of 5,000 inhabitants is even farther off. A journey to the county seat is, even in this age of "flivvers" and hard roads, an adventure which requires at least half a day. Problems of transport loom large at every turn.

Any question that involves wheels—where wheels will go, what wheels will carry, and what makes wheels go around—is a matter of deep concern to every farmer. In the day of horse-drawn vehicles every farmer had to be somewhat of a wagoner, a blacksmith and a veterinary. Axle grease and harness soap were as essential as bread and butter. Now every farm is a miniature garage. Farmers have to know how to patch tires and fix carburetors, or else the whole farm will suddenly be at a standstill.

Of course the wheels of transportation have multiplied in numbers and varieties and speeds in recent years, and the distance problem has been correspondingly reduced. Tractors and trucks with balloon tires can roll out over the back lots even in the mud of springtime. Overhead conveyors carry hay into the haymows and manure out from the cow barns. Motorcycles are replacing saddle horses on some of the big western ranches. The family car, even with grandmother at the wheel, moves almost five times as fast as did a horse and buggy.

Yet there are large sections of the farm lands that are only beginning to be mechanized. Oxen are still to be seen on the hill farms of New England. The mule still dominates large sections of the South; and there are many southern farmers who are too poor to own a mule. In the worst years of the depression, there were northern farmers who removed the engines from their cars, and hitched a horse to the reconstructed chassis. Only in the wheat belt and the corn-hog belt has the gasoline engine

reached the point where it is used by everybody for all purposes. Even there, of course, distances have only been reduced. They have not been eliminated.

In communication, however, as distinguished from transportation, distance has been well-nigh eliminated. The Rural Free Delivery carries letters and packages to almost every farmer's door. Rural telephone lines reach about half of the farmhouses. Farmers make steady use of the radio for weather predictions and market reports, as well as for music, news and propaganda.

Yet farm communication also has its handicaps. The R. F. D. brings mail only once a day in contrast to the city's two to six deliveries. Farm telephones are usually party lines where everybody listens in and the current may become so weak that neighbors have to be requested to hang up in order that the conversation may be heard. Farm radios are often powered by storage batteries and give out entirely when the batteries run down. There are plenty of country homes, too, where both a radio and a telephone are still unrealized dreams. Distance, despite all our modern wizardry, is still a limitation upon rural life.

This distance factor helps explain some of the typical qualities of farmers. They are remarkable, for instance, for their personal eccentricities. Some farmers are notoriously stingy, others spendthrift; some are lazy, others have an eternal thirst for work; some are silent, others talk unendingly. Each man or woman, especially in older years, tends to become a "character."

We have said that these intensely distinctive traits are largely the result of family influences. They are also in part the products of the farm environment. Long hours spent in lonely work, with the lack of that continual comparison and criticism which life in a large group affords, prevents a farmer from conformity to any type. His dress, his walk, and the stoop of his shoulders may make him outwardly as easy to identify as is a sailor or a miner. But his habits and his opinions are very likely to be very much his own. Farmers are almost never neutral about anything.

The scarcity of human contacts makes what contacts there are of special value. Farmers speak to strangers as a matter of course. When there are business dealings, the negotiations are prolonged and every detail relished. Visits, when they are made, are serious affairs preferably lasting at least a week. Country hospitality is proverbial. "We see people so seldom," says the housewife. "Do make yourselves at home."

Neighbors are held in high esteem. Neighbors know all about each other and welcome every chance to talk. The neighborhood, indeed, is often a self-conscious and deeply cherished fellowship. It performs, especially, the vital function of mutual help in times of crisis. This is more precious than any form of insurance. If there is illness, the neighbors' wives come in with soups and jellies, and take turns watching by the sick bed. If

there is death, they help lay out the corpse and prepare the funeral dinner. Fire brings all the neighbors scurrying to form a bucket brigade. The barn may burn to the ground despite their efforts, but at least the house is saved by a thorough soaking. The men "swap work" when one man's harvest is unusually heavy and the other has a barn to build. When a bridge has been washed out or the schoolhouse needs new paint, the neighborhood will pool its resources and solve the problem jointly.

This direct coöperation is the only way there is in many farm communities for meeting an emergency. Hospitals, fire departments, and the other public agencies of the towns are too far away for farmers' use. As one woman on the great plains put it, "There are so few of us, we have to stand together."

This mutual interdependence of the neighborhood is perhaps a reason for the neighborhood censorship. Country neighbors watch and criticize each other with strictness and in detail. Any "goings on" at the Joneses will be commented on and condemned for miles around. The neighborhood wants all its members to be steady, moral citizens. Otherwise they will not do their part in the scheme of community assistance. People who are drunk, disorderly and in debt are always needing help and give no help in return. In city apartments the scandalous behavior of the people next door is no one else's business. In the countryside such scandalous behavior is looked upon as a drag on the whole community.

The distance factor is also an obvious explanation of the backwardness of rural custom. To city eyes everything about a farmhouse dates. The parlor furniture was modern in 1910. The beds, the stoves, and the plumbing, if there is any, may be equally antique. The older women go to church in last year's hats and have not yet learned to smoke. The younger women began to bob their hair about the time that bobbed hair was abandoned by city debutantes. The songs on a farm piano will be the popular hits of year before last, and farm women still play pianos. They may even have and use a family organ.

Farm villages in the East and South still hold square dances, enjoy church suppers and ice cream socials, go in dwindling numbers to the mid-week prayer meeting. The rituals of the Masons or the Odd Fellows are still faithfully performed; and the new boosting spirit of the Rotary, Kiwanis, and the other luncheon clubs is as yet regarded as a somewhat dubious innovation. The traditional cracker boxes are gone from the village store, but the forum still meets on winter evenings, duly punctuated with tobacco juice.

Farm customs do change, but the changes come slowly. Country people, it is often said, are "sot" in their ways. They resist change. But the more fundamental fact is that the country people live too far away from the centers where the new ideas originate. By the time the farm wives have read about a new hat out of Paris or Hollywood, and seen some one wear-

ing the new hat, and had the new hat made available for them to buy at the department store in the county seat, an even newer bonnet has become the rage on Fifth Avenue and in Palm Beach. It is the same with every other type of clothing, furniture, food, drink, or mechanical appliance. Distance slows down the tempo of farm life and keeps it, rather comfortably perhaps, behind the times.

Independence

Another broad term used to describe the social attitudes of farmers is that old American word, independence. This independence has, of course, been steadily evaporating in recent years, particularly in economic matters. But the farmers used to be more nearly independent than they are now. The habits and points of view of the past are still dominant. It would be hard to find today a farmer who owns his own farm—however large the mortgage—who does not think of himself as “his own boss” and who does not act accordingly.

The farmer is, of course, not the only American who thinks of himself as an independent person. Most professional workers show similar characteristics, and the man who owns his own business—whether the business is large or small—is likely to feel free to talk or act as he sees fit.

When a typical factory worker, on the other hand, is compared with a farmer, the contrast is impressive. The factory worker's hours are fixed; each detail of his job is carefully prescribed; the job itself depends for its existence on the judgment or whim of an employer. Some Western fruit ranches are conducted with this same severity of discipline. They have been described as “factories in the field.” But for most American farmers there is no time-clock, no job chart, no wage envelope and no dismissal slip. In his daily doings a farmer is a “self-starter.” He decides for himself when he will go to work, when he will quit, how hard he will work and what kind of work he will do. There may be powerful forces in the background which really determine for the farmer his answers to all these questions. But these forces count only in terms of months or years. The day by day decisions still remain in the hands of the man who owns the land. He is, at least for the moment, the lord and master of his fields, his stock, his tools and his own time.

This reliance on his own initiative and self-control may help explain the farmer's special emphasis upon the precepts of morality. Most country people seem to care, much more than townsmen, for each and every one of the plain virtues. This emphasis has already been credited in part to pressures by the members of the rural neighborhood. But neighborhood censorship seems hardly a sufficient explanation of the stubborn and consistent homage to industry, thrift, honesty, temperance and continence which is the conversational stock in trade of almost every countryside.

This does not mean that farmers actually are more virtuous than other

people; but it does mean that they are more conscious of the need for virtue. A factory worker relies upon the factory discipline to keep him straight. If he sits down in the middle of the morning and pulls out a flask of gin, he knows the foreman will immediately fire him. The threat of prompt and terrifying penalties keeps him on the straight path until the whistle blows. After the whistle blows, what he does is not too important. Yet even then he relies upon the city police to keep him at least partially in order. A farmer has no police, no foreman, and no set working hours. If he sits down in the middle of his morning labor in the fields and pulls out a flask of gin, no one else need even know about his tippling. He may be lazy or spendthrift or drunken for weeks on end before the neighborhood finds out about his lapse from rectitude—or before he reaps his own reward in the form of a short and scrawny harvest. To keep himself in order and at work, his main recourse is a conscience and a set of moral principles. His wife and children also have need of the same inner guidance if they are to stay with their tasks. Independence means self-discipline; and self-discipline involves all the practical virtues.

The other facet of the farmer's independence shines out in a comparison with a city salesman. A salesman's object is to please his customers, not merely by the goods he sells but by his talk and personality. He must therefore be "all things to all men." His opinions swing from left to right, or else are carefully concealed, as he contacts each successive customer. He hardly can be said to have any clear-cut convictions of his own. Farmers, by contrast, are bad salesmen. Most of their products sell by quality and price alone. There is very little chance for "ballyhoo" at a grain elevator, a milk depot or a tobacco shed. The big buyers care not at all about a farmer's politics, or his religion, or his social graces.

The farmer makes full use of this inherent liberty. He says just what he thinks on any subject to anybody. What he thinks is often quite conventional or commonplace. But if his convictions happen to follow some strange cult or doctrine, he is still forthright and unashamed in "speaking out in meeting." He wears what clothes he likes, reads the magazines he likes, joins the organizations that he likes. On election day, his vote may be blind, traditional, or just plain obstinate, but it is very much his own. Quite probably there is no other occupation that makes a man feel quite so free to speak his mind.

Contact with Nature

An extremely basic fact in country living is the continual contact with nature. No matter what the type of farming, the job is done in the open air. The weather, whatever it may be, is right outside the farmer's shirt. The weather, too, is forever blocking or forwarding all of a farmer's plans. So he talks continually about the weather, consults the almanac, considers the Weather Bureau's prophecies, and develops an uncanny skill in making

his own guesses as to whether it will rain or blow tomorrow. He uses, too, the signs of the seasons with intricate insight. The maple sap is rising when the crows begin to caw, corn is planted when the oak buds bulge; peas are harvested when the daisies blossom; it is time to dig potatoes when the maple leaves turn scarlet.

This intimacy with nature tends to produce a certain tentativeness in thinking. Nature is full of variables, and any man who works with nature must keep his plans elastic. There is no use on a farm for the precise, dogmatic blueprints of the factories. Success in agriculture rests upon continual trial and error of specific measures.

This same tentativeness is evident in rural politics. General programs and abstract philosophies arouse very little interest. For socialism, fascism or any thought-out, long-range programs, the farmers have very little use. They may be quite willing to vote for particular measures that are extremely radical. Farmers have been the mainstay in the past of the Populists, the Non-Partisan League, and the Farmer-Labor Party. The present A.A.A. is almost revolutionary, as we have seen, and the farmers are behind it. But these ideas are specific, with promise of immediate results. They come under the head of the old maxim, "Try anything once." If the idea fails, drop it; if it succeeds, try it a second time. Always put your trust in experiment and in experience, never in anybody's theories. This is the basic rural attitude, derived from long experience on the land. Not until social philosophers have tried to make a garden or bring an orchard into bearing will they understand the countryside's indifference to broad ideologies or the countryside's enthusiasm for some specific, "crack-pot" scheme.

Closeness to nature also underlies in part the religiousness of country life. Not all farmers are, of course, religious; but in comparison with city dwellers they are definitely more faithful in church membership and church attendance. Their church services are often stiff and barren; their ministers are not particularly able or attractive men. Nonetheless the farmers, and especially the farmers' wives, stand by the churches and are firm believers in an orthodox faith. Country talk is larded and salted with Bible phrases and the injunctions of the Creator.

These attitudes are often accounted for by the absence of competitive interests. There are no golf courses to be played on Sunday morning; the Sunday newspapers do not arrive till Monday morning; there is no Sunday baseball game or band concert in the park or even a Sunday movie in many rural villages. The call of the church bells rules the Sabbath air. City pastors are envious of the freedom from counter-attractions which the rural pulpits enjoy. Quite probably there is good ground for assuming that one reason why the farmers go to church is because they have nowhere else to go.

Yet religion after all is something deeper than desire for a diversion and

a chance to go somewhere. The springs of faith lie in human experience; and human experience on farms deals largely with the mysteries of life and death that are the essence of religion. Living in the immediate presence of such miracles as the sprouting of a seed, the hatching of an egg, the change of flowers into fruit—and of such wonders as life-giving rain, death-dealing frost, and a whole procession of sun, moon, stars, northern lights and the will-o'-the-wisp—can hardly fail in course of years to make men conscious of some power beyond themselves and their understanding. If men's lives depend, as farmers' lives depend, upon the good will or the ill will of that uncontrollable power, expressed in rain, or hail, or drought, or hurricane, or sunny weather, the consciousness of mystery is deepened. Reverence appears; and prayer, at times at least, becomes a personal necessity.

This is the basis, in the deeper sense, of rural religion. Christianity itself arose in such an atmosphere. The parables of Jesus are crowded with agricultural metaphors. When the Gospels speak of seed that fell on barren ground, laborers in the vineyard, or the shepherd who has lost his sheep, only farmers know from personal experience the full meaning of those words. The great religious festivals mark the high points in the agricultural year. Easter means the resurrection of life with the sprouting of the seed; Thanksgiving is the celebration of the harvest; and Christmas is the time of the winter solstice when the sun "turns around" and the days begin to lengthen. The "old time religion" expresses the experiences of country living, and country people for the most part cling to it.

A more obvious result of life in the out-of-doors is the healthiness of country people. This is obvious common sense. If you are a city invalid, your doctor often will advise a sojourn in the country to regain your health. No country doctor ever suggested to a patient that his health would be improved by a sojourn in the city.

It is often pointed out, of course, that rural districts are unhealthy in the sense that they lack modern hygiene and adequate medical care. The farm families get more than their share of malaria and typhoid. There is a list of chronic rural ailments ranging from rheumatism and asthma to adenoids and bad teeth, which could and ought to be prevented. Sickness is no stranger in the farmsteads.

Yet when the death-rate figures are analyzed with adequate care—making allowance for the fact that young folks tend to move from the country to the city—it is clear that people live longer on the farms than in the great metropolises. The expectancy of life for farmers is distinctly higher than for factory employees or for business executives. Farmers are free from the nervous tensions of city life; they escape the poisonous atmospheres and artificial temperatures that prevail in many industries. From a physical point of view at least, outdoor work is better than indoor work, muscular labor is better than mental labor, and a variety of tasks

is better than a routine job. When a farmer has labored through his year from ploughing to planting to cultivating to harvesting to threshing, every fiber of his body has been exercised. He eats "like a horse," sleeps "like a lamb," and is not particularly worried about vitamins, cathartics or a nervous breakdown.

The poor children of the cities stream out to the dairy farms under the auspices of "fresh air funds"; the rich children of the cities are packed off to the "dude ranches"; business men buy country places which are fifty miles or more from their offices; hikers and cyclists and automobile tourists crowd the rural roads and every third farmhouse becomes a "tourist home." Modern America is invading the back country in the summer time, and even in the winter time. We are recognizing, as never before, that the countryside is a national reservoir of health, because it takes us at least part way "back to nature."

Permanence

One other feature of the social pattern of agriculture deserves attention. This is its quality of permanence. We have already pointed out that farmers' habits and customs are relatively permanent. This is only the beginning of a bigger idea.

Farms themselves have to be permanent, or almost so. There is no point at all in buying or developing a farm unless a man intends to put in a good share of his lifetime on the place. It requires years to build up the fertility of fields, to create a large and profitable herd of livestock, or to raise an orchard up to its full yield. A farmer may spend half the first decade making mistakes, learning what his land is good for and just how to make it give its full return. There is too much capital, also, put into buildings, fences and machinery to permit rapid change. It may be ten or twenty years before a farmer can expect to get his money back from his investment. A farmer, therefore, is very much disposed to stay where he has started. His intentions are so permanent that nothing but a mortgage foreclosure or a great natural calamity is likely to uproot him.

This means that he wants everything he uses also to have a quality of permanence. His barns and sheds are built as solidly as he knows how to make them. Fences and walls and wells and watering troughs are meant to last. The prime requisite of a car or a tractor or a harvesting machine is durability. He plants trees in his dooryard for the sake of the shade they will give twenty years from now. Those trees, he hopes, will shade his children and his children's children. There may even be a family cemetery on the farm, set aside on the assumption that his descendants will possess the land and protect the graves for generations hence.

The same faith in stability pervades his relationships with other people. The men and women whom he meets today, he expects to meet next week and next year and year after next. This means that he must treat these

people fairly and even generously, because he will be wanting fairness and generosity from them in later years. Honesty is the best policy, it has been said, for permanent residents. Dishonesty most often flourishes among migratory enterprisers who will never have to meet again the victims of their trickery.

Here we have still another explanation for a farmer's loyalty to his neighborhood, and for his emphasis upon morality. His success, or even his survival in some crisis, may depend upon the good will of his neighbors and his established reputation for integrity. He may possess considerable skill in the traditional tricks of "horse-trading," but such sharp practices are best reserved for "city slickers" or for comparative strangers from the next county. Only occasionally does a farmer treat a neighbor as an enemy. When he does, the hate is built up slowly and is as permanent as the rest of his relationships. The Kentucky feuds which last for generations are the extreme example.

The stability of farm life also means a degree of economic security. Despite all of their financial woes, farmers occupy a place of refuge in times of panic or depression. Their income may almost disappear, and yet their distress is nowhere near as dire as that of factory workers who have lost their jobs. In the mill towns everything is bought with money. Without money there is no food, no fuel and no room in which to sleep. Farmers without any money still have, for a few months at least, roofs over their heads, wood for their stoves, and a cellar full of stored vegetables to eat. Farmers may ultimately have to apply for relief like other people; but they have at least one reserve line of defense against utter poverty. If only they can find a little cash income every month, they may hold that line of defense for a long while. "You don't never get rich in Cattaraugus County," said one old-timer, "but you don't never need to starve neither."

This was the thought in the minds of hundreds of thousands of unemployed during the worst years of depression. They left the cities and set out for the farms. A new type of population movement appeared in the United States. The normal migration from the country to the cities was offset by an abnormal migration from the cities to the country. It became difficult to say which movement was the greater at any given time. The census of 1940 shows that some of the great cities actually lost population in the last decade, while others made much smaller gains than usual.

Some of those who fled the cities were simply going home. They were returning to the homestead of their childhood where their parents or some brother or sister took them in. Extra beds were set up in the spare room; there were extra plates on the table. The newcomers rolled up their sleeves and helped with the farm work. Such "doubling up" put strains on everybody's temper; but there was space and warmth and food enough to go around. It was much better than living off relief in a tenement.

The other migrants to the farms were "squatters." They got themselves

a plot of unused, semi-fertile soil and put together some sort of a shack to keep out the weather. The use of the land and the old boards and tar paper for the shack might be begged or borrowed or purchased with the last fifty dollars of the family savings. Around the shack, a garden, a woodshed, a chicken coop and a pig sty gradually appeared. Often with little skill and less equipment, using low-grade land, thousands of unemployed from the factories made the fight to save their families and win a living directly from the soil. Many of these squatters have failed, or have gone back to new jobs in the city. But many others are still hanging on. The census shows a recent increase in the total number of farms; and this increase consists of little semi-farms within a hundred miles of the great cities. When the real history of the 1930s is written, tribute will have to be paid to these Americans who tried to solve the unemployment problem by the hard way, on the old-fashioned principle that if you can get yourself a piece of ground, you have a basis for security.

A Warning

Interest in all the aspects of farming as a way of life is increasing in this country. Doubts are appearing as to whether a ten-room apartment on Fifth Avenue with limousine is, after all, the height of happiness. The dream of a house on the land is in the back of many minds. All the features of farm life we have described—the full family life, the sense of independence, the intimacy with nature, the deep feeling of permanence—are parts of the dream. Little people and big people, literary dreamers and hard-boiled executives, all seem to feel that once they get themselves a farm, heaven will be just around the corner.

This dream, like other dreams, ignores all the obstacles. There is the very serious matter of monotony. Farm life is “dead.” Nothing ever seems to happen. It is like eating meat without salt or bread without butter. Minds which have become dependent on excitement through the years may find the silence and the slowness of the country almost totally unbearable.

There is the equally serious matter of skill. Farm life is no job for an amateur. It depends upon a vast network of deft devices and traditional recipes that have never been set down in books. People who have never even used an axe or a scythe, and who actually do not know beans when they see them growing, are almost certain to get hurt, either physically or financially, if they go in for farming.

There is the problem, too, of admission to the neighborhood. Country people are exclusive in a very slow, unspoken way. A new arrival from the city will be treated with obvious courtesy, and watched for months or years to see what he’s really like. If he “puts on airs” and “thinks he knows it all,” he will be quietly blackballed. He may wonder for years why his daughter never is invited to a sociable and why the side-road to his house

is never in repair. He may finally conclude that the whole community are morons, and sell out in disgust.

Farming as a way of life is for city people what matrimony is for bachelors. They may think of it as romantic, but it is really quite commonplace. They may think of it as easy, but it is actually quite difficult to practise or to understand. Those who do understand and practise the mystery often recommend it highly.

CHAPTER 38

FARM TENANTS AND LABORERS

In previous chapters we have looked at agriculture from all four sides, so to speak—the geographical, the economic, the political and the social aspects of the farm problem. It remains for us to see what agriculture looks like from underneath—from the point of view of the tenants and the laborers who live and labor at the bottom of the great enterprise of husbandry.

Agriculture like other businesses has its economic levels and its class lines. The lines are not as sharply drawn, perhaps, as they are in commerce and manufacture. The old American assumption that a good man can always rise from the bottom to the top is not only repeated as a theory, but is often actually realized in farming. Yet the “hard times” of the last two decades have made it much more difficult to climb the so-called “agricultural ladder” from laborer to tenant and from tenant to owner of a farm. We are beginning to accept the idea that America contains some millions of rural workers who have no real chance in life. The situation is serious enough for something to be done about it.

Very little has as yet been done to help these people. They have been left out for the most part in the great program of the A.A.A. They have also been left out of the great labor reforms of recent years. The farm tenants and farm laborers are the forgotten men of the United States. Why this is true will appear as we describe them.

Cash Tenants

Nearest to a decent level of existence among the agricultural lower classes stand the cash tenants. These are men who pay a fixed money rental per year for their farms. They usually own their own machinery and livestock and manage their own affairs as independently as do farm owners. It is often pointed out that there is no real difference between them and many owners. The owners often are loaded down with heavy mortgages. The mortgages require interest. If the interest is not paid, the owner loses his farm. The cash tenant has to pay rent instead of interest. If the rent is not paid, the tenant loses his farm. The rent may not be any higher than the interest on the mortgage. There are farmers who definitely prefer to pay rent rather than to own and have a mortgage. When a farm mort-

gage is foreclosed and the owner loses his land, the owner frequently stays on as a cash renter. The farm is still "his" for most practical purposes. No great change has occurred except in legal status.

Cash tenantry is most common in the corn-hog belt. There the price of land is high and the size of farms is large. A great many thoroughly educated and able farmers simply do not have the capital, or the friends who have the capital, to buy 160 acres at \$200 an acre. It may take them twenty years or a whole lifetime to save enough to buy the land they till. Yet the land is good enough; and these tenants may be making as good a living out of it as do their neighbors who possess their acres.

Quite frequently cash rental is a family affair. A farmer is getting old and has decided to retire. So he rents the farm to his son or son-in-law. The rental payments give him enough income so that he can take a small house in town or spend a modest winter in California. Or the farm may be inherited by several children at their father's death. One of the children undertakes to run the place and pays rent to his brothers and sisters on their shares of the ownership. Rental charges between relatives are likely to be fairly easy. If the payments are delayed, there is no threat of eviction. The whole arrangement is friendly, and comes as near to ownership as tenantry can ever come.

On the other hand there is an increasing tendency toward corporation ownership. The banks and the insurance companies have acquired thousands of farms by the foreclosure of mortgages during the depression. They have been unwilling to sell these farms as long as land prices remain relatively low. So they lease the farms to tenants and hope to get their 6% return from the rents.

When the owner is a corporation there is little friendship lost between landlord and tenant. The corporation's offices are far away. It has no personal interest in the farmer or the farm or the farm community. What it wants is maximum cash income paid steadily and promptly. It may hire a special supervisor to check up on all its farms, increase the rents where that is possible. The supervisor may advise the tenant on his methods or his choice of crops, in order to extract more money from the farm. If the tenant fails to follow this advice, the corporation finds another tenant. This sort of treatment seems arrogant and heartless from the tenant's point of view. He does what he can to undercut the corporation. Yet the corporation's officers feel that their first duty is to their stockholders and therefore they must make their investments pay. If a tenant is rebellious or inefficient, he must leave. What happens to him afterward is the tenant's own lookout.

A third type of landlord is the big farmer. He is a man of many acres, more than he can care for personally. He, therefore, rents parts of his land. His policy is part way between the stiffness of the corporation and the leniency of relatives. He thinks of himself part of the time as the

friend and neighbor of his tenant; yet he wants his cash income, and will take sharp action if he does not get it.

Unless the landlord-tenant dealings are entirely on a friendly basis, the experts in agriculture agree that there is something basically wrong with tenantry. Its grave defect is lack of permanence. Tenants are never sure of their tenure. They may be on the same farm next year or they may not. The decision as to how long they will stay is made under the law by someone else. The tenants' plans are thus entirely temporary. They work on a "get rich quick" basis.

A farm, as we have emphasized, is a long-time enterprise. It takes years to bring the fields to full fertility, to build up the herds of livestock, to organize the buildings and machine equipment for maximum efficiency. A tenant has no such years ahead of him. So he uses up the fertility of the fields, makes no attempt to build up his livestock, and lets the buildings and machinery run down. The only improvements he makes are on a temporary basis.

The landlord has a similar attitude. He is not living on the tenant farm, nor does he expect to own the place indefinitely. So why put money into permanent improvements? If he should sell in a year or two, the investment might be lost. He has no more enthusiasm than his tenant for new fencing or drainage for the fields or a new roof on the cowbarn.

This is one way in which farms deteriorate. If tenantry increases, as it has in recent years, the deterioration will be more pronounced. In European agriculture this problem has been so acute that sweeping changes have been made by government. In Denmark, Ireland and elsewhere the owners were compelled to sell their great estates and the land was redistributed. We can only hope that such extreme correction of the problem of tenancy will never be called for in the United States.

The "Share-Croppers"

Below the level of the cash renters we encounter the "share-croppers." We mentioned them in our survey of the cotton belt. The cotton fields are the home ground of the share-cropping system. It can also be found in the tobacco belt and, to a less extent, in Northern agriculture.

The share-cropper, as we said, owns practically nothing. Not only his land and his house, but his seed, his fertilizer, tools and his mule are usually furnished by his landlord. The rent is paid in the form of a share of the completed crop. Quite often the landlord's share is half of the harvest; it may be more or less than that.

The share-croppers have become notorious for their poverty. Their average income is estimated at \$200 or \$300 a year. Their homes frequently have leaky roofs, wide cracks in the walls, wooden shutters in place of glass windows, chimneys built of sticks and clay instead of bricks, and often no outhouse at all. The floors are bare; the walls are papered with old news-

papers; the only furniture is a table, a pair of benches, and perhaps two beds for six people. The food is salt pork bought in slabs and flour made up into biscuits. They may be able to afford molasses. They are short of shoes and soap and medicines. Poverty seems a weak word to describe the complete lack of almost everything which is the mark of a share-cropper's home.

There are several reasons for this state of things. One reason is tradition. These people have always lived this way. They are the descendants, on the one hand, of the "poor whites" of Civil War days; and the descendants, on the other hand, of the even poorer blacks who formerly were bound in slavery. Never has anything else than poverty prevailed in the cabins in the cotton fields. No one until recently has thought it could be otherwise.

Another reason is the conflict between the races. The color line divides the whites and Negroes in every phase of living in the lower South. White and colored tenants may work on the same plantation under identical conditions, but there is no coöperation between them. The plantation owner has the chance to play one group against the other. If his white tenants are rebellious, he dismisses them and brings in Negroes. If his Negro tenants are too lazy, they are replaced by whites. Neither race hesitates to displace the other. Consequently both suffer.

A third factor is the soil. Many of the cotton lands have been worked to death. The ground was far from rich originally, except for the alluvial river valleys. Cotton has exhausted what fertility there was. The repeatedly-plowed fields have suffered deep erosion. The rain has cut deep gullies, and the rivers of the South are coffee-colored with the soil that they are washing out to sea. Yet the landlords insist on cotton, and nothing else but cotton, because it is the one cash crop. Rent paid in cotton can always be turned into at least a little money; and the landlord needs money almost as badly as the tenant does.

Another difficulty is the lack of education. The rural schools of the cotton states are probably the weakest in the entire Union. There is very little tax money to spend on schools. What money there is has to be divided between two completely separate school systems. Negroes and whites are not allowed to study together. Both groups in consequence get less chance to study. The school year is frequently short; the teachers are underpaid and are often not much better educated than their pupils. It is not at all remarkable in the cotton lands to find people who spell out the words letter by letter when they attack a piece of reading, and who have to get out pencil and paper to subtract sixty-five cents from a two-dollar bill. Complete illiteracy is definitely higher in the lower South than elsewhere.

People who have never even learned the "three R's" are gravely handicapped. They cannot learn about new farming methods or better household management. Such matters as soil chemistry or crop rotation or a deficiency of vitamins in diet are entirely beyond their grasp. They may

not even understand the label on a sack of flour. They particularly suffer in their dealings with the landlord. The contract which they sign they cannot comprehend. Consequently the contract often says in essence that the tenant has no rights at all—that the landlord can evict at will. The charge account at the plantation store is almost as much a mystery. They may be told at the year's end that the price of their half of the crop comes to twenty dollars less than their year's grocery bill. How are they to tell, even if given access to the books, whether the landlord has cheated them or not at some point in the reckoning? They might be entirely free from debt if only they knew how to add, subtract and multiply.

Beneath the entire situation lies the poll-tax. The poll-tax is a requirement in eight Southern states for voting. It runs from two to five dollars. Share-croppers just do not have that much money on election day. So the vote cast by whites as well as Negroes is very small. It may be only 20 or 30% of what it would be elsewhere. Voting is confined to people who have at least a little money.

Hence the Southern politicians pay very little heed to the needs or wishes of share-croppers. Non-voters do not count in politicians' programs. There is no point in trying to give them better schools, or better legal protection against landlords, or any other governmental aid. It may be contended that if the share-croppers did vote, they would not know how to vote for what they needed. At any rate they probably will not get much attention to their needs as long as they are disfranchised by the poll-tax.

Perhaps the heaviest handicap of all is the credit system. It produces what is sometimes spoken of as peonage. Peonage implies that the tenant is tied to, and cannot leave, the land. When the credit system puts the tenant, as it often does, deeply and permanently in debt to the landlord, the landlord has the tenant almost completely in his power. If the tenant starts to leave for any reason, the landlord can claim all (not merely half) of the year's crop and can charge the tenant an extra sum for harvesting the crop. The landlord can seize all the tenant's household goods in payment of the debt. These household goods may be approximately worthless, but the tenant hates bitterly to lose his only bed and his last frying pan. If the departing tenant is a Negro, he is quite likely to be arrested for debt evasion. Debt evasion is not a strictly legal charge, but Southern courts are not too particular about the legal rights of Negroes. Moreover, any tenant, white or black, who leaves without his owner's consent can be almost certain that no other owner in that county will consent to "hire" him. He might find a new place, if he could travel to a district where he is not known. But he has no money at all for traveling expenses.

In pure theory a share-cropper is a free man, at liberty to change his occupation as he chooses. In hard practice he is bound to his cabin in the cotton fields almost as completely as a chattel slave. There are, of course, kind-hearted owners who try as best they can to look after their "planta-

tion people." There are other owners who exploit their workers to the limit. The share-cropping system is in last analysis a series of local despotisms. Its results are not exactly beautiful.

There have been efforts recently to organize share-croppers' unions. Such unions, if they were ever solidly established, might practice collective bargaining and force the owners to grant better terms. But collective bargaining requires united action; and united action in the cotton belt means whites and Negroes in the same organization. As soon as a share-croppers' union mixes the races on an equality in the same meeting, rioting begins. The whole white community rises to defend the color line. The Ku Klux Klan or its equivalent drives out the union organizers, horsewhips a few union members, and that is the end of the share-croppers' union.

Even if unions were established, their bargaining power would have to face another threat—the increase in mechanization. On the larger and more modern plantations tractors are displacing mules, and machine cultivators rattle down the cotton rows. A mechanical cotton-picker is on the point of being introduced commercially.

Mechanization means the end of share-cropping. The machines can be used profitably only on large fields. The plantation ceases, accordingly, to be a checkerboard of small family plots. All the land is thrown together and handled as one big unit. The share-cropper either becomes a day laborer or else he is dismissed. As a day laborer he may get 100 days' labor a year at \$1.00 a day. This is even less than his previous annual income. If he is dismissed, no one has any suggestion at present as to where he may go.

Machines are almost always labor savers. Their great advantage, in terms of profits, is that they cut down the labor bill. If labor is extremely cheap there is no point in using machinery. Quite probably the cotton fields would have been mechanized earlier, as the wheat fields have been, if the price of labor in the South had not been so extremely low. Certainly as soon as a plantation owner faces the prospect of having to pay more, for any reason, to his share-croppers, he starts considering the possibility of "hiring" machines instead of humans to produce his crop. As the situation stands at present, almost any attempt to increase the scanty income of share-croppers is very likely to decrease that income by pushing the share-croppers down into the ranks of the day laborers, or down to the even lower level of the unemployed.

Regular Farm Labor

There are in the United States about two million agricultural employees who work for wages on a farm, with more or less continuous employment. Their situation varies greatly, depending on the type of farm on which they labor.

One group of workers is the "hired men" of the dairy farms and the

corn-hog belt. There will be one or two or three such men on any middle-sized and fairly prosperous farm. They are hired by the month or year. They work alongside the farmer himself doing what he does, starting when he starts and quitting when he quits. They may know, or are in the process of learning, all the farmer knows about the art of agriculture. Dairying and corn-hog farming involve a variety of tasks continuing fairly steadily throughout the year. The job of a farm hand on such a farm is fairly stable.

The relationship with the farmer and his family is quite human. If the hired men are unmarried, they live in the farmhouse and eat the same food at the same table as the family. Their bedrooms will probably be small and stuffy and they probably never get a chance at the white meat of the Sunday chicken, but they may borrow the family car on an off evening and the farm wife mothers them when they are sick. They are almost, but not quite, members of the family.

A married hired man has a cottage of his own—not as good a building as the farmhouse, but somewhere near as good. The hired man has his own garden and pigs and chickens and has free access to the woodlot if there is one. His family are not the social equals of the farmer's family, but they are treated as neighbors in a variety of ways.

The catch in this otherwise quite reasonable arrangement is the matter of cash wages. The wages are stated as so many dollars a month "and keep." The "keep" means food and shelter. This costs the farmer little and he is liberal with it. But the cash wages run as low as \$5 or \$10 a month. The farmer has little cash himself and he is very careful as to how he spends it. The question as to how a farm hand can save enough money out of \$120 a year to buy a farm for himself, or otherwise improve his lot, is a difficult one. The answer is in many cases that he stays on as a farm hand until he finally dies or is too old to work.

The situation of the ranch hands of the West is somewhat similar. Work in the wheat country lasts at least six months out of the year; work in the cattle country is a twelve months' job. It is skilled work. No novice can manage a combine or brand a herd of steers. The ranch hands, therefore, are as steady, self-respecting laborers as are the farm hands of the East.

The difference lies in the fact that the ranches are much larger and therefore hire more help. Ten or twenty men are too many to be included as members of the family or given separate houses of their own. So the "hands" sleep in a ranch house which is not much different from a military barracks. They get their "chow" from a cook house as in a lumber camp. The men had better be unmarried, or keep their wives in town. The facilities and the atmosphere are entirely masculine.

The ranch owner is the "boss" of the "outfit." He gives the orders as to what to do, and his men carry out his orders. Everybody feels free to talk back to the boss and even call him by his first name. The easy-going

custom of what was the frontier assumes equality between all men. But it is fundamentally an employer-employee relationship.

The wages, as in the East, are mostly "keep." A cowboy who sees \$30 a month is doing well. Being a single man, he may lose the whole \$30 in a single night in town. Saving for the future has never been a Western virtue. The future on the high plains has been previously regarded as unpredictable, but probably bright. So the ranch hands did not worry. Nowadays the future is still unpredictable but probably not so bright. The price of beef as well as wheat has been low, or at least not high enough for certain profits, for the last twenty years. The great wheat and cattle state of Montana has definitely lost population. What may happen to the present generation of thirty-dollar "ranch hands" in their later years is a dubious question.

The other group of regular farm workers is in the cotton belt. These are the part-time day-laborers which the plantations hire, particularly at picking time. There are several hundred thousand of these people. Their number is increasing with the introduction of machines.

Most of them are Negroes. They live in shanty-towns outside the larger villages and smaller cities. They get work, when they can, in town as well as in the fields. The women work at least as often and as hard as do the men. These are the careless and apparently carefree people who mow a lawn or dig a ditch or do the "white folks'" washing, and who are gathered in by truck-loads by the "boss" of a plantation whenever he has extra work to do. Their work is unskilled and slipshod. Their pay is a dollar a day or even less; and the white man who pays the dollar will tell you that the Negroes did not earn it.

The level of existence in the shanty-towns is probably lower than among the share-croppers. The share-croppers, after all, are many of them white, and white people expect and are expected to have a little something. The shanty-towns are purely black, and are assumed therefore to be shiftless and woebegone. Houses which seem to be abandoned and fallen partially to ruin have families of six to ten inhabiting them. The littlest children may wander around without any clothes at all. The ditches are often open sewers; the water supply has never been examined. The death rate and the crime rate are unusually high.

Two factors, it would seem, save these communities from complete collapse. One is the great difficulty which Negroes have in getting access to liquor or to firearms. The white man's law keeps strict watch on these two agents of disruption. The other factor is the climate. When summer lasts for ten months in the year, the lack of clothing, blankets, fuel, and even of a roof is bearable. If only the colored folks can fill their stomachs somehow, they can turn their thoughts to dances and revival meetings and live a few months longer.

The striking fact concerning all the rural laborers—both North and

South, and East and West—is the degree to which they have been overlooked by the reformers. The so-called New Deal has had as its chief virtue in many minds its championship of the needs of the poor. A series of sweeping measures have been passed by Congress in an attempt to lighten the sufferings and the handicaps of laborers. Yet the National Labor Relations Act does not apply to agricultural workers. There is no attempt to encourage them to form unions and bargain for the same rights which the law says factory workers should enjoy. The Wages and Hours Act also does not include the farm employees. The stated maximum of forty hours a week and minimum of thirty cents an hour applies to industry. Farm laborers work much longer than forty hours and get paid much less than thirty cents, without protest on anybody's part. The new unemployment insurance under the Social Security Act does not cover agricultural unemployment; and so on. Special efforts have been made by the national government for the relief of the American Indians, the Alaskan Eskimos, and the inhabitants of Puerto Rico. But the two millions of farm laborers have been given no attention whatever.

The explanation lies quite probably in the field of politics. Farmers, as we explained, are very powerful politically. It is the farmers, of course, who employ the farm laborers. Like other employers they want entire freedom to hire and fire and fix conditions of employment as they please. But unlike industrial employers, the farm employers outnumber the farm employees, and outvote them. The poll-tax in the lower South, of course, puts farm employees almost completely out of politics. The farmers, too, are elaborately organized as pressure groups. The farm workers are unorganized. The result is that the farm problem as presented in Washington and in the newspapers is really the problem of the upper and the middle classes in agriculture. These classes get intense attention and elaborate assistance. The lower class in agriculture is mentioned so rarely that many people do not realize that it exists.

Migratory Workers

The lowest level in the lower class in agriculture is occupied by the so-called casual laborers or migratory workers. These are people who have no established homes. They move from one farm region to another, seeking jobs wherever there may be a sudden need for extra help. They work for two weeks or more on one farm, and then spend the next two weeks in search of another farm which needs their services.

Migratory workers are difficult to study, because they move so frequently.

The communities through which they pass know little and care less about their characteristics or their problems. Data regarding their health, their education or their incomes gets omitted from the local records. Even the United States census probably misses a good many of them. What we

know about these "gypsy" people is largely based on personal observations of particular groups. The particular groups observed may not be representative of migratory labor as a whole.

We do know that there are such people—perhaps half a million of them—and that they follow the seasonal procession of the harvests, beginning in the South and traveling northward. Harvest time is the period, of course, of peak demand for labor in almost every sort of agriculture.

Twenty years ago the largest trek of transients followed the wheat harvests. Beginning in early summer in Oklahoma and the Texas Panhandle, and ending in the autumn in the prairie provinces of Canada, great bands of rugged, homeless men moved behind the ripening grain. The sudden demand for extra labor was so great that trainloads of harvest hands were recruited in the eastern cities. The coming of the combine has changed all this. Machines now do the work of men. The yearly flood of harvest hands up through the wheat lands has largely disappeared.

The one variety of harvesting which is not, and probably will not be, mechanized is market gardening. Vegetables and fruits are much too tender to be handled by machinery. So it is in the market garden areas that transient labor particularly flourishes. The government investigators have identified three streams of movement. One stream starts with the oranges and winter vegetables of Florida and moves up the Atlantic coast. It flows through the strawberry region of North Carolina, helps with the early potatoes of Virginia and the raspberries of New Jersey, and finishes its labors in the Cape Cod cranberry bogs. A second stream moves out of Texas up the Mississippi Valley, following a similar sequence of harvests. The third stream floods through the Pacific states. It begins with lettuce in the Imperial Valley of southern California, meets the crisis in the prune and peach orchards along the San Joaquin, and ends the season picking Hood River apples in Oregon. These so-called three streams are, of course, an arbitrary simplification. There are dozens of different crops involved, and the workers move in all directions more or less in their pursuit of work.

Almost all the information that we have regarding migratory labor comes from the Pacific Coast, especially from California. There the number of such workers is undoubtedly the largest, and the difficulties they create are most acute. Irrigation, as we earlier explained, is the dominant form of agriculture in the Pacific states. Irrigation runs heavily to market gardening; and market gardening creates the most acute demand for migratory labor. In the fruit and vegetable oases of the Far West the status of these temporary workers has become a matter for violent argument and occasional bloodshed.

The acuteness of the argument is largely due to the change in the racial character of the migrants. The rush job of the harvest used to be done largely by Mexicans, with a sprinkling of Japanese and Filipinos. All these people were used to long hours and low wages, and made little fuss in

consequence about the miserableness of a job. They were also foreigners, speaking a foreign language, with few rights and fewer privileges in an American community. The established, native-born land owners had a simple answer to any grievances these people might express—"If they don't like it, they can get out."

Since the depression, however, native-born Americans have displaced the foreigners. White families by the thousand, driven out of the wheat lands by the drought and out of the Cotton Belt by the tractors, have been pouring into California. They may arrive with only one gallon of gasoline and less than a dollar in their pockets. They immediately take the only jobs available, as pickers on the ranches. These people are desperately poor, but they have known better times. They expect to get back on their feet again, and they promptly lose their patience when some ranch-owner treats them as he has been used to treating Mexicans. Then trouble begins.

The custom in orchards and the like is to pay by the box, not by the hour. The work looks easy and the whole family turns out early in the morning to pick as many boxes as they can. What they often find, however, is that there are too many pickers. They get in each other's way, and nobody earns as much as he had hoped. The more pickers there are, the lower the pay falls per box. If the pickers object, the owner tells them to move on. He knows where he can hire still more pickers.

At the end of two weeks of this sort of situation, the job is over. The workers have to find another job, and they use up all that they have earned in getting to the other job. The next job will be better, they hope; but conditions turn out to be much the same.

In the meantime the family is, to put it mildly, camping out. They may be sleeping on the ground under an improvised tent. They may have the use of a board shack put up by the landlord—a one room affair without light, heat or water. No landlord is going to erect rows of complete cottages to be occupied for two weeks only in a year. Sickness is fairly frequent under such conditions. There is no money to hire a doctor; and the local charities feel they have all that they can handle in caring for their own resident poor. When any member of the family is sick, except the baby, that takes a slice out of the family's feeble earning power. The family may fall so low in health and money that it is absolutely stranded. Yet as soon as the picking is done, the landlord orders them to move on, and calls in the sheriff to speed their going. Whither they are to go, the landlord does not know nor care.

When the landlords are questioned as to this "treat 'em rough" procedure, they point to their expenses. With crop prices what they are, and water rates so high, and taxes mounting, how can they afford to go in for what amounts to charity? Nor can they afford to pay the extra taxes to have the county extend "charity." These people are paid at usual rates for

all the work they do. If they fail to make a go of it, that is their own lookout.

This is the stock answer given by employers everywhere. Whether it is true or not is never clear. Only by a thorough look at an employer's accounts, can the question be settled as to whether he can or cannot afford to treat his labor better than he does. And employers usually refuse to make public their accounts.

The transient workers on the West Coast have tried to better their condition by forming labor unions. This is by no means easy among people who do not know each other and are continually on the move. What usually happens, if anything at all happens, is that some outside organizer goes among the pickers, establishes his own leadership in a few days, and calls a strike. This is the signal for the county authorities to act. A company of armed deputy sheriffs, or a less formal vigilance committee, moves in and forces the strikers to depart. They depart in all directions and nothing further is heard of the union or its leader in that county.

The federal government has begun to take a hand of late in the transient situation. Federal camps for migratory workers have been built with lights and running water and sanitary toilets. There are as yet only a dozen or two of such establishments. There will have to be several hundred of them if every irrigated area where transients stop is to be served. The workers view these camps for obvious reasons as a great blessing. The landlords like them too in one respect. They mean essentially that the taxpayers of the whole country are meeting part of the expenses of the business of market gardening. On the other hand the authority of the county officers does not run on federal land. That means that federal camps may become centers for union organization. This the landlords do not like.

These federal camps represent one point at which the New Deal has actually concerned itself with the problems of the lower class in agriculture. If the camps succeed, it may be that the government will find other ways of helping the "under-dogs" in farming. But if such help is given, it will only be because the public conscience has been stirred. The "under-dogs" themselves, whether they are farm laborers or farm tenants, do not constitute a pressure group. They are at present, and apparently will be, approximately voiceless in the continual debate which is democracy.

CHAPTER 39

CONSERVATION OF NATURAL RESOURCES

The last and most intriguing way of looking at American agriculture is what might be called the view from above, or bird's-eye view. This is a truly lofty approach. It considers all the lands, cultivated and uncultivated, together with all the forests, all the streams and all the minerals beneath the lands, as a single unit. All of these resources are considered not in terms of the immediate present, but from a long-run future point of view. We ask one all-embracing question— Are the total natural resources of the United States sufficient to maintain the nation for the next one hundred or two hundred or more years?

This, of course, is a question which passes far beyond the farthest limits of agriculture. It includes mining in a dozen different forms. It involves lumbering and scientific forestry. It raises problems of waterpower, flood control, fisheries and navigation. Almost every human activity touches at some point the problem of our natural resources. Even the publication of this book depends first of all upon an adequate supply of paper, which immediately leads to an inquiry as to our sources of pulpwood and flax, and gets us back to the question of the productivity of the land itself.

Yet the so-called conservation question is, after all, primarily the concern of the farmers. They are in charge of the use and the abuse of the soil; and the soil is, from any point of view, our primary natural resource. Farmers, also, have a great deal to do with the utilization of our forests, and with the course and flow of our streams. Even the exploitation of our minerals involves the farmers, as will appear when we examine the petroleum and coal supplies. The question of our natural resources, therefore, can probably be studied best in connection with the other problems of agriculture.

Fundamental Factors

The broadest sort of statements and loosest kind of thinking are typical of our discussion of this question in newspapers and elsewhere. Some sad-eyed prophet tells us that in twenty years the gasoline will all be done, or that the forests at the present rate of cutting will not last half a century. We are terrified with statistics as to the millions of tons of soil washed away each year into the sea; and we see visions of starvation for our children or our children's children.

There may be a great deal of truth in such predictions. Or there may be

very little truth. It all depends on certain basic assumptions which usually are overlooked. Until those fundamental factors are stated and examined, there is no chance at all of making a usable prediction as to the future of the resources of the United States.

The first of these fundamental factors is the population. Quite obviously the drain upon our resources will largely depend upon how many people we expect to have one hundred years from now. The habit until very recently has been to estimate that number at 200 or 300 million. The estimates were based on the rate of growth in the nineteenth century, and seemed quite reasonable. If such an enormous total was to be expected, the question of conserving natural resources would certainly become acute.

Now the predictions are being strikingly reversed. The birth rate is dropping faster than the death rate; the death rate is expected to rise; the influx of foreigners into the country has practically ceased. The census of 1940 shows the smallest rate of increase in our history. The probability now seems to be that this nation's population will cease to grow entirely in another decade or two, and will begin to shrink. There may never be more than 150,000,000 people in the country.

These predictions may, of course, be as far wrong as were the earlier guesses. But if they are reliable, and they certainly seem to be, the conservation problem becomes very much less serious. It is, by simple arithmetic, only half as hard to find food, fuel and the rest for 150 million, as it would be for 300 million.

The second factor to consider is the standard of living. It clearly takes more gasoline and electricity and coal to maintain a rich home than it does a poor one. The rich home might not use much more food, but it certainly would consume more lumber for buildings and more wood-pulp in the form of newspapers and magazines. So any guess as to the adequacy of our natural resources involves a guess as to how well off our people are to be.

The hope is, of course, that we can at least maintain "the American standard of living." This means roughly the amount of goods consumed by a family with a \$2,000 annual net income. More than half of American families now live below that level. With the present unemployment in the cities and widespread distress among the farmers, the hope of lifting the incomes of the lowest group of our families is not particularly bright. Yet the hope stubbornly persists. If it is realized, it will mean heavier consumption than at present of many of our resources.

The future also may produce an increase or a decrease in the purchasing power of the so-called middle and upper classes. Any such change will have its proportionate effect upon our natural resources. The prospect contains several variables. The only point that can be made with certainty is that any prophecy as to the sufficiency or insufficiency of our basic supplies ought to include a statement as to the standard of living which is to be expected. Are we to have two cars in every garage or is everyone to be

content with bicycles? Questions of this sort lie hidden in every prediction in regard to natural resources.

A third element in the situation is the future of foreign trade. Is America to exchange goods freely with other countries, or are we to accept by choice or by necessity a policy approximating "autarchy"?

Under a system of free trade throughout the world, this country could send abroad those raw materials, or their derivatives, of which we have the largest surplus. The other countries would send us their greatest surpluses. We might then no longer worry about our national supply of any particular commodity. The problem would transform itself into a question as to the natural resources of the entire earth—in relation to the population and to the standard of living of the entire earth.

If we go in for autarchy, however, the problem is confined exclusively to our own boundaries. The danger of exhaustion of some of our resources—petroleum, for instance—becomes much more formidable. There are even certain items such as tin of which the United States contains almost no supply at all. Economic self-sufficiency is not even a possibility for small countries with a limited variety of resources. For great countries like the United States the policy requires strict control and rationing of some of our supplies, accompanied in certain cases by the use of substitutes.

The outlook just now favors an approach to autarchy. Events in Europe and Asia seem to be choking off the movement of international trade. The great nations of the world are on a war basis; and a war basis implies a maximum attempt at self-sufficiency. The United States quite possibly may be cut off from many opportunities for trade with the Old World. The New World, on the other hand, will probably continue to be open to foreign commerce. The United States could easily, if it were necessary, use armed force to gain access to all the markets as far south as the Amazon. Of course, too, in the long future envisaged by the conservationists, the earth may attain permanent peace and universal freedom for trade. Almost anything may happen in international relations in the next hundred or two hundred years.

The final factor in the problem is often labelled "the state of the arts." This blanket phrase includes the entire gamut of human skills and technical devices. These are involved whenever the raw materials of the earth are transformed into any kind of goods which people use. The American Indians, for instance, lived in the midst of large supplies of iron ore. But they did not know how to smelt iron or forge steel. They therefore used stone axes and stone arrowheads. The conservation problem for the Indians was, so to speak, confined to the prospects for an adequate supply of flint. Or consider the ignorance of the uses of manure among the farmers of the thirteen colonies. When the compost of the barnyards was thrown away, the exhaustion of soil fertility was much more rapid than it might have been.

This question of the present and the future state of the arts is kaleidoscopic nowadays. The vast development of petroleum, for example, has occurred within the scope of a single life time. New methods of locating oil, of extracting oil and of refining oil—and on the other hand, new ways of using oil—have altered the petroleum question every few years. The Germans now derive a large share of their gasoline from coal; but they are also using coal to produce artificial rubber. This is only one small phase of the thousand variations which modern chemistry and geology make possible in utilizing natural resources.

Even the basic business of raising crops on land may be transformed in future years. There now exist on a commercial basis “farms” which are confined to boxes. Tomatoes, forage for cattle, and other useful vegetation are produced in trays using no soil at all. The plants grow in water and are fed scientifically with the precise amounts of nitrogen, potash and phosphate for their maximum development. What this procedure may mean to all the farmers in 1990 is anybody’s guess.

We might go on indefinitely to describe the scientific processes which have been used, or which are now available for use, in this progressive nation. What the effects of these changes will be in the next five or ten years it is fairly easy to predict. When we gaze ahead, however, one hundred or more years into the future, any prophecy whatever becomes highly problematical. Yet some assumption as to the “state of the arts” has to be made whenever anyone makes statements about our natural resources. Usually the assumption is that our present techniques will continue unchanged. This assumption seems quite improbable. Yet any other definite assumption is even more difficult to make. This fourth factor in the conservation question is almost, if not entirely, unknown.

An almost inescapable suggestion emerges at this stage of our analysis. That is that we strictly limit the range of time with which we deal. By cutting the predictable future down to a maximum of thirty years we can make at least a few assertions that will not prove totally askew. Reducing the time limit makes the problem also much more interesting. Most of the readers of this chapter will still be alive in 1970, and can check the accuracy of our present estimates. Those who insist upon trying to push back the veil of the future for a century or two are still of course at liberty to do so according to their personal enthusiasms. They can use these limited forecasts as a point of departure for their flights of fancy. Serious students might as well admit, however, that the basic factors in the problem of our natural resources are much too variable to permit useful inquiry from anything but a fairly short-range point of view.

Let us, therefore, make certain definite assumptions, which admittedly are arguable but which seem somewhat probable, and then go ahead. Supposing that the United States includes about 150 million people, that our standard of living is similar to that at present, that our foreign trade is

limited quite largely to North and South America, and that the techniques already available are utilized to the fullest extent, just how bountiful or scarce will be our natural resources in 1970 or thereabouts? This is a fascinating question. It involves the wealth, in the most basic sense, of ourselves during our own lifetimes.

The Soil

The largest element in this national wealth, we hardly need repeat, is the fertility of the soil. The richness of the "dirt" in the United States determines fundamentally the quality and quantity of all our vegetation; and upon the vegetation depends in turn the prosperity of all our animal life. The juices of the land demand, therefore, profound respect.

Fertility consists primarily of three chemical elements—nitrogen, potassium and phosphorus—in various forms. These elements are usually available in ample quantities on new farm lands. The decaying trees of the original forests, or the rotted stalks of the thick prairie grasses, leave behind them in the surface soil the raw materials for further generations of plant life. Virgin lands are strong lands.

After a series of crops have sucked the strength out of the soil, that strength may be renewed in several ways. The natural manure of animals will return much of the nitrates and the phosphates. The animals themselves distribute the manure as they graze; or it may be carried from the barnyard to the fields by a redolent manure-spreader. Artificial fertilizers are also widely used. These may be composed of waste products from the slaughter-houses, the sludge from sewage reduction plants, or the guano dropped by generations of birds on tropical islands. There are also great fertilizer mines. Phosphates are mined in Florida and the Carolinas; potash is dug from vast, new deposits in the alkali deserts of the West; nitrates are imported from the nitrate "quarries" of Chile. Nitrogen is, moreover, derived from the air by two established chemical processes. The fertilizer factories mix any or all of these materials by various recipes. The bag of fertilizer is labelled with a specific statement of its contents. A farmer can first get an analysis of his soil's deficiencies from the state experiment station, and then feed his soil with the particular mixture that it needs. There are, too, certain vegetable fertilizers. The group of plants known as legumes—peas, alfalfa, soy beans and the like—produce an extra supply of nitrogen by bacterial action. If one of these crops is planted and plowed under, the succeeding crop of wheat or corn will profit by the legacy. The use of legumes at frequent intervals is one of the prime tricks in crop rotation.

With all of these soil-renewing methods at his command, there would seem to be no real excuse for any farmer who allows his land to run down and become sterile. Yet many farmers lack the information or the intelligence to apply modern methods. It is against this backwall of agricultural

ignorance that the whole phalanx of agricultural schools and experiment stations has been battering for more than fifty years. The triple gospel of fertilizer, soil analysis and crop rotation has consequently made great progress. Other farmers have lacked funds with which to introduce the better practices. This is the point of attack of the soil conservation program—another previously unmentioned feature of the A.A.A. Farmers not only receive benefit payments for not planting crops which exhaust fertility; but they also receive extra payments for planting leguminous crops which increase fertility, or for using one of several other soil-conserving practices. A third type of farmers let their soil run down because they do not care about its future. These are the tenant farmers. The problem of reducing tenantry is, as we have seen, quite complicated.

By and large the prospect of returning to the soil what the growing plants take out of the soil seems fairly bright for the next thirty years. The lands of the United States are almost holding their own, or can be made to do so, against the burdens laid upon them by wheat and corn and cotton and tobacco.

The really serious drain comes from another cause—erosion. Erosion, it is estimated, takes away at least ten times as much fertility as do the crops. Erosion takes two forms. High winds blow away the soil; and water washes it away.

Wind erosion becomes serious where the ground is plowed and rainfall is rare. The center of it is the dry-farming area of the West. There half the land is planted to wheat; the other half lies fallow and is continually plowed. That second half of flat, far-reaching, deliberately crumbled soil lies wide open to every wind that blows. In some years there is just enough rainfall to moisten the broken ground and hold it in its place. In other years continual sunshine turns the ground to dust and the first big wind walks off with thousands of tons of fertile top-soil. The dust is so thick that cars turn on their lights at midday, and farmhouses are half buried in the drifting dunes. The now-famous dust bowl stretches all the way from Texas to the Dakotas. In the successive droughts of the 1930s whole counties in that region have been partially abandoned.

In the opinion of some experts the mere existence of dry-farming is a mistake. The land should have been left under its original blanket of sage brush or buffalo grass, and used entirely for cattle grazing. Then wind erosion would never have been serious. Now that the farms and families are there, however, and committed to dry-farming, any proposal to remove them and return the ground to grass would be politically impossible.

What the government has done is to plant shelter belts of quick-growing, drought-resisting trees. Stretches of cotton-woods, 100 yards wide and 100 miles long, act as wind breaks and dam back part of the dust clouds. Governmental officials, with federal funds to spend, have also waged campaigns in behalf of "strip-planting" and of "listing." "Strip-planting"

means ribbons of grass planted at intervals to catch the dust. "Listing" involves plowing at right angles to the prevailing winds, so that the dust will pile up in tiny drifts in each successive furrow.

Whether any or all of these devices will meet the threat of wind erosion is problematical. A good share of the present dust bowl was occupied by farmers in the 1880s, and then abandoned in the 1890s after several years of drought. There were no government bureaus in those individualistic days to fight a rear-guard action against the weather. Perhaps the massed forces of modern science and paternalism can win the fight which individualism lost. Yet the outcome still depends quite largely upon how many clouds are in the sky.

Water erosion is much older and more widespread than the destruction caused by wind. It occurs in plowed fields where there is too much, or too sudden, rainfall. It works worst havoc, of course, in hilly country. A sudden cloudburst on a field of corn or cotton, planted on a hillside, will cut not only channels but deep gullies in the ground, and even wash away the growing plants themselves in the young torrents. Another heavy rain cuts more and deeper gullies. Unless prompt action is taken, the present crop is lost and the accumulated food for several future crops is gone as well. In the cotton areas of the Southeast, where the rainfall is heaviest and the fields are kept continually under the plow, erosion has literally removed entire farms. Square miles of rolling fields have been transformed into a jumbled mass of raw, red gulches where even weeds refuse to grow.

Not all of the eroded soil, however, is lost. The lands in the river bottoms get the benefit of some of it. The richness of the up-country is carried by the spring floods down into the lowlands, and dropped as muddy silt upon the valley farms. The intervals of New England and the black lands of the Mississippi delta have no fertilizer problem at all, due to the wastage of erosion.

The battalions of the Department of Agriculture have, of course, attacked water erosion on several fronts. They advise turning the hilly fields over to pasturage or hay, so that the massed roots of grass will hold the ground in place. If solid grass is impracticable, then they advise strips of grass at intervals. They also urge contour plowing. Contour plowing follows the slopes. The furrows run at right angles to the flow of the water and the raindrops form puddles instead of rivulets. Those farmers who follow these suggestions of the government get special payments for compliance. Government officials have taken direct control of the fight against erosion on several thousand farms under five-year contracts with the owners.

The whole battle against the ravages of water has just begun. The techniques by now are well established. The application of the techniques by "dirt farmers" is spreading. It seems reasonable to expect that in ten or

twenty years water erosion will be practically conquered, and the greatest threat to soil fertility removed.

In European or Asiatic eyes America's concern about the conservation of its soils is like the worries of the ultra-rich. If Japan or Italy or France possessed a quarter of the tillable land per capita that we enjoy, those nations would consider that their agricultural future was secure forever. In the countries of the Old World they cultivate with loving care rock-ridden terrains which an American would toss into the discard as entirely unusable. From poorer lands than those we do use, they get larger crops. The yield per acre of wheat in Western Europe runs twice as high as the per acre yield in the United States. What American farmers do is to economize on labor by wasting land. The yield of wheat per *laborer* is higher in this country than in Europe. This is only another way of saying that our soil resources are great in proportion to our population.

If worst comes to worst, therefore, and the lands of the United States begin seriously to fail, we can still have recourse to European methods. By devoting much more hand labor to each plot of ground, and by using more ground, we could double or even treble our present total crop production. Such a policy would admittedly involve more workers on the land, and quite possibly would lower the general standard of living. But we certainly could fall back on such intensive methods if the necessity should arise.

After all, we should remember that the farm problem in America at present is a problem of surplus rather than of shortage. We are now struggling to prevent the land from producing too much. To worry at the same time for fear the land will produce too little seems mildly contradictory.

It is entirely possible that in the next thirty years our agricultural surpluses will largely disappear. But to claim that we will be faced within that time by serious crop shortages would be downright and unjustified pessimism. In the present programs of the Department of Agriculture alone, we have sufficient insurance against soil exhaustion for at least a generation.

Forests

There is better reason for serious concern about the "permanent crops" of the land, namely the trees. This problem is best understood by observing the practice of the early pioneers. Those pioneers slaughtered the forests. They used all the wood they wanted to build their homes, their fences, their tools and their furniture. They burned enormous logs in their fireplaces. They even built their corduroy roads with solid timbers. Yet these methods did not dispose of one-tenth of the trees that darkened the fields and prevented agriculture. So they built great fires in the clearings and destroyed billions of feet of lumber in the flames.

Today we mourn the loss of all that tall, clean timber. The bonfires of the pioneers were, we say, a crime against posterity. Yet the pioneers had

no alternative. They could not sell the lumber because the lumber markets were few and far away and transportation costs were much too high. They could not allow the trees to stand. If they had, they would have starved for lack of fields for corn and wheat and pasturage. Timber in the early days was a curse. The useful way was to destroy it as rapidly as possible.

We have today a modified version of the same problem in the Pacific Northwest. The slopes of the Cascades and the Coast Range still carry a vast forest of virgin spruce and fir and redwood. These trees are being mowed down wastefully. Only the largest, straightest timber is sent to market; the rest is left to rot. The shores of Puget Sound are littered with beams and posts a foot or more in diameter, which no one bothers to haul away.

The plain fact is that lumber, like most other heavy goods, has value in proportion to its nearness to the market. Those twelve-inch timbers along Puget Sound would bring good prices in a New York City lumber yard; but the cost of hauling them three thousand miles makes them approximately worthless in the lumber lands of the Northwest.

This cost of transportation is a major hurdle which every plan for saving the forests has to meet. Scientific forestry has carefully worked out methods for cutting only the largest trees in a particular forest, making full use of tops and slabs and slashings, and providing for the growth of new trees to replace the old. Professional foresters who understand these methods have been available for forty years. Yet the big lumber companies refuse to hire foresters or make use of their techniques. The extra costs, they say, would be too high. Only in government-owned forests, where the question of profits or losses can be ignored, is a long-run policy of conservation consistently applied.

There is one threat, however, to the future supply of lumber about which there is no debate. That threat is fire. Forest fires destroy much more timber in a year than is ever wasted by the lumber companies.

The prevention of forest fires has become a national crusade. Fire wardens watch from high towers and mountain tops for the first sign of smoke. The C.C.C. and local units in the villages go into action as soon as the flames start to spread. Even travelers passing through the forest can be drafted to join the fire brigades. Hunters and campers are being educated and disciplined as to what not to do with matches, cigarettes, and smoldering embers. Yet the fire menace is by no means conquered. We may finally be forced to resort to the European method of fire lanes. By clearing wide corridors through the trees at frequent intervals, it becomes possible to quarantine a conflagration within a fairly narrow rectangle. This, however, is a costly method. Lumber, it would seem, is not yet valuable enough in America to make us willing to pay the full price for conserving it.

Another national crusade has been concerned with planting trees. Arbor

Day, when each school child is expected to plant one tree, has been celebrated for fifty years. More recently the state forestry services have offered three- or five-year seedlings free to anybody who would set them out. In the Northeast especially, there now exist large tracts of artificial forest. The trees are chiefly pines which mature fairly quickly. Not even young men feel disposed to plant an oak or a hard maple forest. Pines can be cut in thirty years; oak and hard maple take sixty years and more to reach their growth. Here again is a job for the government. If the nation is to have a future supply of the slow-growing hard-woods—hickory and cypress, as well as oak and maple—quite probably the government will have to do the planting.

The question of the future of the forests depends quite largely, on the other hand, upon the future demand for wood. This is a highly complicated problem. The uses to which trees are put are extremely varied. Some of these uses are increasing, others decreasing. What the general tendency may be is hard to say.

America traditionally has built its houses almost entirely of wood. This, from the European's view, is rank extravagance—and an unnecessary fire hazard as well. England, France and Germany have been building with brick and stone for centuries. We could do the same. The modern architects are urging houses built of concrete, of steel, and even of glass. It seems quite possible that within thirty years new wooden houses will be a rarity of the United States. If so, one major drain upon the forests will be stopped.

Two of the greatest needs for timber in the past have been for railway ties and for mine props. Railway mileage now is steadily decreasing. The demand for ties is only for replacement; and that demand will lessen as more of the branch lines are abandoned. The modern method of mining starts its excavating at the far end of a long tunnel. As the digging advances, the roof of the tunnel falls in with its own weight. This requires much less "shoring" than did the older "room and pillar" method. The demand for mine timber is lessening.

Another major use for trees is in the production of paper. Our people read, or fail to read, a gigantic quantity of newsprint. It requires some fifty acres of pulp wood to produce one Sunday edition of the New York Times. The pulp wood forests—chiefly spruce and poplar—have been shrinking so fast that over half our pulp wood is now imported from Canada. Even the Canadian supply is not unlimited. It certainly has seemed as though America could not go on forever with its two and three pound newspapers.

But the paper business is now in the midst of a revolution. By a new process Southern pine can now be made into newsprint. There are millions of acres of pine lands in the South. The trees are cheap, and they grow to pulp wood size in ten or fifteen years. Huge paper mills are rising all along the southern seaboard; the Paper Festival in Savannah is an annual event.

The time is approaching when the United States will again be self-sufficient in its supply of pulp wood; and we apparently can go on using paper much more lavishly than any other country for many years to come.

If space permitted, we might go on to discuss the displacement of wood by metal in the manufacture of furniture, the economies involved in the use of veneer and plywood instead of solid boards, the gradual disappearance of wooden barrels in a great variety of trades, and the abandonment of wood construction in ships and bridges, railway cars and automobiles. It is difficult to think of an important phase of American life where the use of wood is not to some extent decreasing. By each such decrease the problem of conservation of the forests becomes less acute.

Yet it is still true that the trees are falling, or being burned, at least twice or three times as fast as they are growing. All the existing conservation practices need certainly to be continued and developed. Such innovations as fire lanes and artificial stands of hard-woods ought to become parts of public policy. Otherwise we may—or we may not—be forced down to the predicament of France or Germany, where green twigs are husbanded for firewood, and a man must get a license to cut down his own trees.

Minerals

The mineral wealth of the United States is greater than that of any other country in the world. The quantity and the variety of our underground resources make an impressive inventory. The largest, richest and most easily accessible iron mines on earth are in the Lake Superior region. The great Mesabi Range is a solid mass of ore which has only to be scooped up in steam shovels. There is no doubt about the country's supply of iron and steel for fifty or one hundred years to come. Copper is equally plentiful. There is a mountain composed of copper ore in Brigham, Utah, and almost equally rich deposits in Arizona and Montana. We have more than enough of lead and zinc and sulphur, and of bauxite for the production of aluminum. The output of our gold and silver mines is much more than is needed for currency, jewelry and every other purpose. Modern technology, moreover, reworks most of the metals. Scrap copper, scrap lead and scrap iron and steel account for a quarter to a third of the output of the foundries. This use of second-hand materials is a further guarantee against the exhaustion of the mines.

Yet there are certain serious gaps in the list of American minerals. We mine at present almost no tin, nickel, asbestos, manganese, chromite or tungsten. Each of these materials is important in industry, and all of them are imported. With the future outlook for foreign trade as dark as it appears at present, there has been grave concern in several quarters lest our supply of these essentials be cut off. Nickel and asbestos come entirely from Canada, and will almost certainly remain available. Congress has made large appropriations for the accumulation of reserve stocks of tin and the

other metals. There are also possibilities of utilizing low grade ores, especially of manganese, which are known to exist within this country. If we assume that freedom of trade will continue with all of North and South America, we can get our manganese from Brazil, our tin from Bolivia and our chromite from Cuba. The problem of these "deficit" minerals requires careful and concerted action, but it is by no means insoluble.

We have as yet made no mention of either coal or petroleum. Both are obviously fundamental.

The coal supply is a question of quality, not of quantity. About a sixth of the entire surface of the United States has some kind of coal under it. The quality varies from the cheap brown lignite in many sections of the West to the high-priced anthracite of Eastern Pennsylvania. It is the anthracite which is definitely dwindling. It is not all gone by any means, but the mining is increasingly difficult and the price has climbed so high that householders have been shifting to oil or gas, or even to soft coal. The clean, white smoke of hard coal rising from the chimneys of New England is becoming in large part a memory of horse-and-buggy days.

Bituminous, or soft coal, on the contrary is far from giving out. The great coal fields of West Virginia, Kentucky, Ohio, Illinois, Alabama and a half dozen other states will last at least for the next hundred years. Farmers in southern Iowa and elsewhere have private coal mines on their own land. The problem of bituminous coal operators for the present is like the problem of the farmers. They are loaded down with surplus production and consequent low prices. The federal government has attempted under the Guffey Act to set up a sort of A.A.A. for the special benefit of the soft coal mines. Only in a fairly far future is there any likelihood that this country will be reduced to burning up its low-grade brown coal, and there is an enormous quantity of that.

The petroleum supply, on the other hand, has been threatened with exhaustion for fifty years. Repeatedly the conservationists have pointed out with accurate figures that the existing oil fields could not meet the existing demand for more than twenty years. After that near date gasoline, fuel oil and lubricating oil would have to be imported at high prices, or else expensive substitutes would have to be developed. But each time such dire prophecies were made, somebody discovered a great, new oil field. The last such bonanza of "black gold" was found in Illinois. Before that came Louisiana, East Texas, Kansas, Oklahoma and California. Of course it seems improbable that this race between the oil prospectors and the consumers can go on indefinitely, with the prospectors always ahead. But the luck so far has held; and the American public has grown much too happy-go-lucky about the acute and vital question of its future oil supply.

There is one source of waste, in particular, which can and should be remedied. This is the "offset" well situation which arises from the sacred

principle of private property. Petroleum occurs in huge underground reservoirs or pools which may extend for twenty or a hundred miles. The land above the pool is usually owned by dozens of individual farmers. Each farmer, under American law, has title to that part of the pool which underlies his land. Yet the pool is a single mass of liquid, and it is entirely possible for one farmer to pump out not only the oil under his own land but the oil under his neighbors' lands as well. The moment oil is discovered, therefore, everybody starts sinking as many wells as possible, as close to the adjoining properties as possible; and the merry race of pumping and counter-pumping begins. The result is that the oil comes out of the ground much faster than it is needed—often much faster than it can be stored. The extra oil runs off into the rivers; and the newest oil field is exhausted in jig time.

There have been recent efforts to halt this competitive extravagance by limiting the hours or the amounts of pumping. Several of the leading oil states have a joint compact for rationing petroleum production, which they enforce upon the individual owners. This rationing increases prices, as well as cutting wastes. But there is still considerable difficulty with "hot" oil, produced illegally; and there is always the possibility of a new oil field in some state which is outside the rationing system. Most conservationists now advocate a thorough-going control by the federal government as the only cure for "offset" wells.

The property situation in other countries is radically different. In Venezuela, Colombia and elsewhere the surface over the oil pool is controlled by one or two large owners. Consequently there is no rivalry and no hurry about getting out the oil. In Mexico and in Russia the oil itself is government property and can therefore be handled as a unit with a minimum of loss. The general result is that the United States is using up its petroleum reserves at top speed, while the other nations are holding back their oil pools in preparation for the future. Unless this country makes a basic change in its oil laws, it is entirely possible that within thirty years our people will be "dead broke" as regards oil and have to buy from foreigners at monopoly prices. In the whole list of our mineral resources, petroleum is the one item that calls for immediate and definite action.

Water

Of all the forms of natural wealth the most important, next to the land itself, is water. The points at which water touches human life are almost innumerable. We have already dealt with two of those points—irrigation and erosion. There is space here for three more phases of the water question—transportation, power development and flood control.

Water transportation holds a time-honored place in our history. Before the coming of the railways, the rivers and canals were the cheapest, and in some ways the best, methods of handling inland commerce. Navigation

on the Great Lakes is still of major value for ore and coal and grain. The locks at Sault Ste. Marie handle more tonnage than the locks at Panama. There is real use made, also, of the Ohio and the Mississippi by barge lines which handle bulky and non-perishable goods. But, for most of the country, water travel is largely out of date. The railroads, in contrast with the waterways, run almost everywhere, go much faster and do not freeze in wintertime. The auto trucks on hard roads have the same advantages. The usefulness of freight boats in recent years has been limited to a few heavy commodities on a few outstanding water routes.

Yet the enthusiasm for improving navigation never seems to die. Congress each year votes large appropriations for building dams and locks and dredging channels in streams which hardly see one boat a year. Sometimes the reason offered is national defense. National defense is itself an elastic term. It may mean the obvious necessity of deepening the approach to a United States Navy Yard, or it may involve the theoretical need of using waterways in case all roads and railways were destroyed by an invading enemy. Whether national defense is the real reason or merely a pretense, is difficult to decide without specific data for each project.

The other possible explanation is the "pork barrel." Any district likes to have federal money spent in its vicinity, whether the money is wisely used or not. Every congressman likes to procure for his district a large amount of this "pork." So the rivers and harbors bill in each successive session has been notorious for half a century as an example of Congressional extravagance. Whenever, therefore, a new proposal is made for improving navigation on the Missouri, the Columbia or the Tennessee, skepticism is at least permissible. The proposal may have real merit or it may be just another case of "pork."

Water as a source of power evokes even greater enthusiasm. This in some instances is entirely legitimate. There are quite a few points in the United States where hydro-electric power can be produced economically and efficiently. Niagara Falls is an example. But it should be remembered that only ten per cent of the electricity in the country is made by water. Steam plants using coal are our main source of power, and probably will be. A steam plant can be located almost anywhere, right next to the demand for power. Water power is only available at a few places, and those places are quite likely to be a long way from "civilization." The limit for transmission of power on high-tension lines is about two hundred miles. Steam plants, too, are much less expensive to erect. The huge initial cost of a big dam is prohibitive, except where the demand for power is large and steady and will continue to be large and steady for years to come. When two further points are added—the doubling of the efficiency of steam engines in recent years, and the irregularity of water power in times of drought—it is easy to understand the preference for steam power in the minds of some electrical engineers. The question as to whether water

power is better than steam power is not a general question. It depends primarily upon specific, local circumstances.

National enthusiasm for water power has increased in recent years. Enormous new dams have been erected—Boulder Dam on the Colorado River, Bonneville and Grand Coulee on the Columbia, Norris and Wheeler on the Tennessee and many others. All these are government, not private, projects. The government can and does charge a large part of the construction cost to other purposes for which the dam was built—navigation or irrigation or flood control. Such a method of cost accounting is essentially reasonable. But there is wide difference of opinion as to just what proportion of the total costs should be assigned to power, and how much to other purposes.

Upon this question of the apportionment of the construction costs depends the question as to whether a particular power project "pays" or not. It may cost, for instance, \$100,000,000 to erect a particular dam. If you decide, somewhat arbitrarily, to assign half of that sum to power development, the government may be able to sell enough electricity to meet the interest and depreciation charges on \$50,000,000. Then you say the project shows a "profit." But if you decide to charge three-quarters of the original cost to power, the government is still selling the same amount of electricity from the same dam, but its receipts are not sufficient to meet the carrying charges on \$75,000,000. Then you say the project is operating at a "loss." Thus the question of usefulness or wastefulness appears to be a controversy between theories of bookkeeping.

The fact is, of course, that the advocates of publicly-owned power development have a social standard of success, rather than a purely economic one. They are interested in putting electric lights and washing machines into poor homes, in encouraging new industries in regions of unemployment, and in broad plans for the coordinated development of all the human and material resources of the nation. They do not therefore care particularly whether a given project produces profits or not. To a conservative mind this social viewpoint creates dangerous confusion by mixing business with charity, and putting the government into unfair competition with private enterprise. The controversy at this point involves a fundamental difference in political philosophy.

In any event the basic fact remains that most of the nation's electricity is at present produced from steam power rather than from water, by private corporations rather than by governmental enterprise.

The flood-control phase of the water problem is of much greater importance. The sudden catastrophe of overwhelming water hits some area in America every year. It is thought that floods may be increasing in frequency and in destructiveness, due to the cutting off of timber that holds back the rains at the head-waters. The statistics on this point are not quite clear.

There are two schools of flood prevention in the United States. One school concentrates on the head-waters. It advocates the restoration of the forests on the ridges and an increase in grasslands over tillage in the upper valleys. This for a large river such as the Connecticut or the Tennessee—to say nothing of the Mississippi—is an enormous undertaking. It involves control of hundreds of thousands of acres. Some of the programs of the A.A.A. are working in that direction. But these are, literally, only a drop in the bucket.

The same school urges the building of dams on the head-waters. If these dams are large enough or numerous enough they may work well. The flood-control system of Dayton, Ohio, is organized along these lines and has proved its worth.

There is danger, however, when the same dams are used also for water power. A dam which is to halt a flood needs to be left empty in normal times. A dam for water power needs to be kept full or nearly so. The two purposes seem inconsistent. One of the controversies concerning the Tennessee Valley Authority centers around this point.

The other school of flood-control makes use of heavy construction on the lower river where the floods do the actual damage. High masonry or earthen walls will block off the flood waters, and will also force the river to deepen its own channel. This is essentially the levee method in use for generations on the lower Mississippi. The walls have to be high enough and strong enough, or else they are worse than useless. But if enough money is spent under competent direction the method works. At Cairo, Illinois, the last flood came within six inches of the sand bags piled on top of the new reinforced levees. Six inches is a small margin, but the town was saved.

There are perhaps three conclusions which may be advanced regarding flood control. One is that a great deal needs to be done and done quickly. Great cities—Pittsburg, for example—ought not to live in constant danger of inundation. The second conclusion is that the method used must vary with the terrain, the rainfall and other local factors. Emphasis on reforestation, for instance, has only the vaguest sort of meaning in certain river valleys. The third point is that flood-control ought not to be confused with other purposes. To speak of flood-control as a function of power development may be a direct contradiction, or nearly so. To associate flood-control with navigation may be almost as absurd. Dams built to insure a deep-water channel have to be kept nearly full, and are not of much use in halting sudden freshets.

In water control, as in the other phases of conservation, what we need is more precise and unemotional thinking, and the introduction of a few specific remedies at definite points. The conservation problem has been too often used as a refuge for pessimists who want to do nothing, and as a happy hunting-ground for reformers who revel in all-embracing gen-

eralities. By bringing the particular questions down to earth, we can analyze the factors and move directly toward solutions. If only the other difficulties connected with agriculture were as surmountable as is the conservation problem, the prospect for life in America some thirty years from now would be distinctly bright.

PART X

Population and Race

CHAPTER 40

PEOPLE

The richness of America should be measured not only by its waving wheat fields, its snow-flecked cotton vistas, its millions of acres of trees, its Midas-like mines, its towering buildings, its thousand of miles of paved and steel roads and the other of its manifold forms of material wealth. More important are the 130,000,000 men, women and children without whom such wealth would be meaningless, and who are both the means of producing the wealth and the reason for its production. While the future of the United States depends in part on its natural resources, including geographic and climatic conditions, it rests just as much upon the people who give such factors life and meaning.

The importance of population depends upon both its number and quality. Any modern nation obviously requires a large population to maintain its place in a world which is anything but peacefully static and in which the weight of sheer numbers, whether used directly for military action or indirectly for making that action economically possible, is of paramount importance. Yet on the other hand the people may be so great in number in relation to resources as to produce a poverty-stricken country, or may be so backward in the industrial arts as to be negligible in importance. The close-packed millions of India or China have been no guarantee of either good living conditions or of world power in the immediate past.

The Quality of Population

At least as important as quantity of population is quality. The New York Yankees have no more or bigger players than the Mud Center Independents, but the results are vastly different. Presumably whole nations or races may differ from their neighbors, although most past generalizations have lacked scientific accuracy. Rumors are current that Germans are slow and methodical, that Frenchmen are volatile and emotional, that Englishmen are devoid of humor, that Japanese have inadequate vision, that Negroes are best adapted for hot climates, that Russians are cruel and inefficient. Many such generalizations are probably like the old dogma that women can not understand mathematics—a statement which can be denied hotly by any boy who has done co-educational work in mathematics.

Regardless of present differences between various races and nationalities, many people join whole-heartedly in the pious hope that the quality of the population may be improved in the future. Any one can look around him and see large numbers of the vicious, the dissolute, the idle, the criminal, the stupid. If these classes could but be eliminated in the United States—or in any nation—we would have greatly increased possibilities of wealth and culture. But few of us retain the aristocratic tradition that stupidity is necessary to permit the dirty work being done.

Unfortunately for our hopes of improving the quality of the population there is now not only no hope of breeding the best elements of our stock—even if we knew what was “best”—but also there are serious difficulties even in eliminating the worst. A recent committee of neurologists investigated the possibility of using the various state sterilization laws to eliminate hereditary defects. It concluded that there was no basis for sterilizing people who are themselves normal, and that there was likewise no case for sterilizing people suffering from immorality or character defects, as for example criminals or prostitutes; it was of the opinion that environment was probably more important than heredity. It concluded also that defects, which justified sterilization included (1) Huntington's chorea, hereditary optic atrophy and certain other disabling degenerative diseases known to be hereditary; (2) Feeble-mindedness of familial type; (3) Dementia praecox (schizophrenia); (4) Manic-depressive psychosis; (5) Epilepsy. It held that much further study would be necessary before any important attack could be made through negative eugenics. (For a further discussion of this subject see the family topic.)

The necessary conclusion from the present study of eugenics is that many years will elapse before we will be able to solve any of the important ills of the world by selective breeding. For the present our main effective interest in the problems of population will necessarily be confined in large part to the matter of gross numbers and distribution.

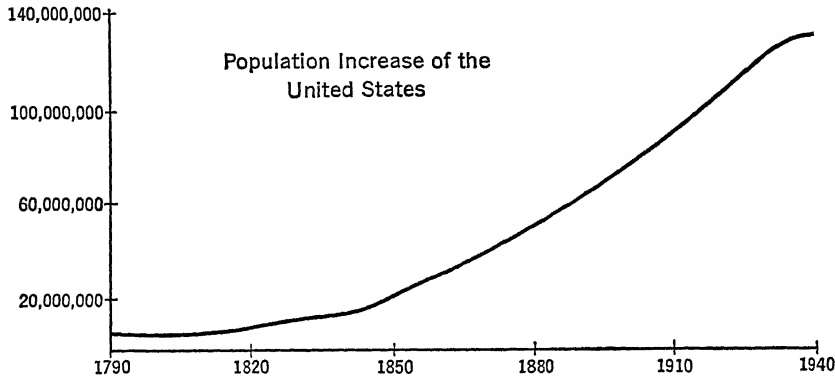
Natural Increase of Population

The nineteenth century witnessed the most magnificent increase in population which the world has probably ever seen in a similar period. White Europeans more than doubled during the century—in fact if one includes their American offshoots, they practically tripled. Their increase was greater than that of the rest of the world combined, even though they still remain outnumbered by the colored races. Presumably this spectacular spurt was not unrelated to the industrial revolution which occurred at the same time, and yet the proposition that parents produced more children to supply the necessary labor for the industrialists is rather incredible. What really happened was not that the birth rate increased, but that improved medicine and sanitation kept people alive longer than had been the case at an earlier period.

The United States furnished the most dramatic example of the increase of white population during the nineteenth century. Each child growing to maturity could view twice as many fellow citizens as when he was a child. From 1800 to 1900 the population doubled, then redoubled, and then almost doubled again—the actual figures are five to seventy-six million.

Most of the American increase of population has been due to the fertility of American families, buttressed by the tremendous natural resources that permitted people to live well and survive to old age. Even the extremely near-sighted, however, must observe the nearly forty million immigrants who arrived in the years from 1821 to 1930. Whether or not these forty million added appreciably to the population has been argued. There are those who hold that each arrival at Ellis Island has meant an empty

CHART 8



American cradle, and that consequently present population would be much as it is even if no immigrant had arrived during the past century. They point to the fact that there were no decided upswings of population in decades having great immigration and no great lag when immigration was small. On the other hand, opponents have pointed out that even with the birth rate of 1800 continued to date—an extremely unlikely development—that our present population would be smaller than it now is. They hold that our immigration was by no means entirely a net gain, but that it did represent an increase of undeterminable proportions.

Most Americans have been extremely proud of their expanding millions, feeling that the increase was proof positive of the vitality and virility of a young nation under free institutions. A virgin continent lay ready and waiting for exploitation. More people and then still more people flooded across the Appalachians to occupy the Mississippi Valley, to push across the plains and the mountains to the Golden Gate and to the mouth of the Columbia, and to cast covetous eyes on Mexico, Cuba, Puerto Rico, Panama, Hawaii, the Philippines and other outposts of empire. America

expanded from a fourth rate power of small settlements strung along the Atlantic seaboard to an imperial nation occupying a continent, and second to none in its economic and naval power. Its industries produced a Rockefeller, a Ford and a Morgan, made possible by vast supplies of raw materials, labor, transportation and markets.

Among the chorus of thanksgiving that greeted the products of prolific American parenthood, came early a minor and discordant note. What would be the result if we continued to increase at this rate indefinitely? The fourfold increase in the nineteenth century transformed five into seventy-six; continued into the future the result would be over a billion by the year 2000. Not only would the entire American continent be thoroughly occupied but even standing room would be at a premium.

The fear of human increase was obviously more vital to Europeans than to Americans, and it was from Europe that the real alarm came. Starting with the jeremiads of Rev. R. T. Malthus (English) a whole series of sorrowful prophets bemoaned the danger of over-population, contending that human beings multiplied more rapidly than did the food supply and that there was real danger of mankind starving to death. Malthus himself felt that the only safeguard against this unhappy possibility was to allow the "natural checks" of war, famine and disease to operate to remove surplus people, and this solution was greeted with some enthusiasm by English industrialists who were glad to have good religious and philosophic backing when they objected to raising wages or to paying for the relief of the poor.

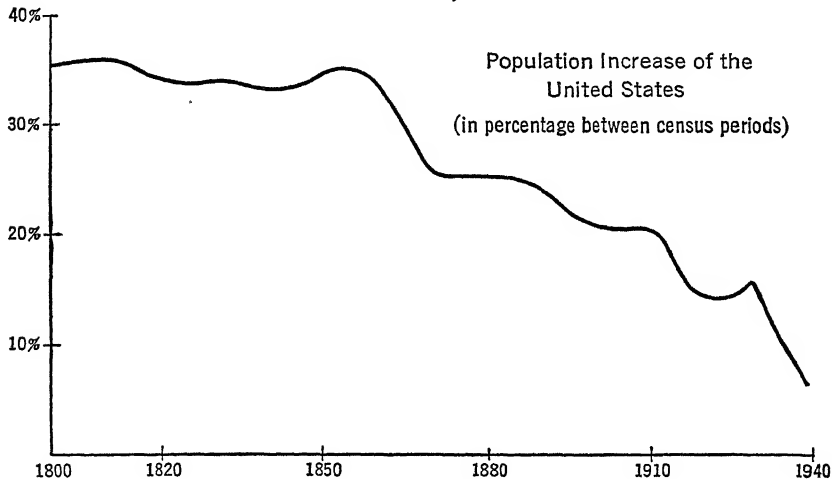
American echoes of the fear of over-population were faint until well into the twentieth century, but then increased notably. Various Americans looked at a continent that was occupied, the forests fading away, the land being washed and blown into eternity, slum congestion in the cities, unemployment increasing even in prosperous times, and were worried. They began making surveys of raw materials and estimating how many people could be properly fed, clothed and housed with existing materials. Such surveys were always unsatisfactory because no one could predict with any great accuracy just what other materials would eventually be discovered or what new agricultural or industrial processes would come into existence. Their main effect was to intimidate and frighten the credulous.

Just at the time that the predictors of disaster began really to frighten the timorous about the imminence of a food and raw material shortage, other commentators noted that the magnificent flood of population was drying up. By 1900 practically every country inhabited by whites was showing a decline in the natural increase, while of course the rest of the world had never had any such increase. In 1926 it was estimated that each European mother gave birth to only .93 potential mothers and that the population would start to decline within twenty years. The same trend was apparent in the United States. In contrast to the rising curve of

population, consider the rapidly dropping curve indicating the percentage of increase.

This fall in the rate of increase of population has been projected into the future so that most experts believe that the United States, together with other western powers, will stop increasing and start to decline in population before the end of the present century. This speculation has brought to the surface a completely new set of viewers-with-alarm. These timid souls are particularly worried by the fact that the rate of natural increase varies from country to country and from race to race. They point to situations like that of France and Germany, where French population remains fairly stationary while Germans increase in numbers. If this differential continues the ultimate supremacy of Germany would seem

CHART 9



only a matter of time. Similar comparisons can be made between other nations, and many Americans are particularly disturbed because the nations which are expanding most rapidly in numbers are in general the nations for which Americans care least. The legion of the worried raise the moan of race suicide and beat the tom-tom for larger families, even urging that the government provide subsidies to encourage parents to be more prolific. Numbers seem much more important than quality.

Particular concern has been expressed over the possibility that the colored races may in the near future outstrip the whites in number and power, ultimately conquering and destroying white civilization. The general argument is that the whites have passed the peak of their productivity in terms of children, while the colored birth rate remains high. If the colored peoples were industrialized and received the benefits of modern sanitation and medicine, their death rate presumably would fall while the birth rate remained high, thus obtaining a rapid increase. This situation

obtained for the whites during the nineteenth century. Ordinarily this fear has found expression in a "yellow peril," since a black, red or brown peril seems quite remote. While such fears have had small justification to date, the social scientist must be foolishly brave to try to forecast the future. One can only hope that if another race takes command of the destiny of the world that the results will not be worse than those of the white domination.

Effects of a Declining Population

While the relation of future population growth to world power is an intriguing subject, there is probably more immediate importance in the domestic implications of a stationary or declining population. The United States more than any other nation has been geared to the expectation of an ever increasing number of people. Industries have been constructed to supply a greater market than at present exists, real estate owners have lived in the hope that land and buildings will be in increasing demand, farmers have awaited impatiently more mouths to feed, schools have been planned with the expectation of a future greater demand for education, and in every way Americans have looked forward to an indefinite growth of population. The removal of this hope will change many expectations for the future.

The end of the prospect of an ever increasing labor supply and market need not necessarily affect business badly. Most of us can consume gladly much more than we now do, so that business may well find its salvation in an improved system of distribution and in the more intensive cultivation of existing markets. The consequent possibility of more vigorous competition may not materialize, but rather be replaced by an increasing consolidation tending toward a complete monopoly of each field. A lack of population growth will presumably lessen the opportunity for new competitors and thus make increased governmental control more likely. The effect on wages is problematical, but the probable lessening of the birth rate of the poorer economic classes will probably mean an increased competition in the skilled occupations and professions. Land values may be subject to less inflation—undoubtedly a desirable result. A more intensive search for commercial uses for farm products is quite possible.

The non-economic effects of a stationary or declining population are infinite. Education may be improved in quality if the main concern need no longer be the search for a desk for each child. Adult and various other special types of education may increase. The churches may decline in membership since in the past they have depended for their converts largely on the children of parishioners. Military strength may rise or decline depending on the comparable situation in other countries, and herein lies the best argument for people who want an increasing population. Possibly the United States will feel less certainty that size in itself is a commendable

quality, and presumably the complacent acceptance of a rapidly growing population as an indication of strength and virility will receive a check. More emphasis will probably be placed on quality and less on quantity.

Immigration Prospects

The extent to which population will grow in the future depends upon only three factors—births, deaths and immigration. Of these three, immigration can be dismissed briefly as a factor of any importance for the future. Both by law and in fact America has ceased to be a refuge for the oppressed. Immigration has declined within the past decade to such an extent that it has become negligible, and no one expects that it will ever again become important—in fact existing legislation makes such an outcome impossible. The tendency is rather the other way, with the possibility of still further restricting potential entrants and of deporting some of those who arrived in the past.

Death Rate

Apparently the death rate has also performed its most spectacular antics, so that little more can be expected from it. For as long as we have figures on which to base our estimates, the death rate has been declining. The Massachusetts figures run from 1789, when they showed a death rate of almost 30 per thousand per year; the comparable figure for 1930 was 12. National figures likewise show a decline, but are less useful because they have been collected only since 1900 and even then for not all of the United States. Recent years have seen the death rate waver around 11 per thousand. If the Massachusetts figures are trustworthy and typical the greater share of this amazing decline has come within the past generation.

A decrease in the death rate means that the average person has a longer life, or stated in another way, that the average age of the population has increased. A boy baby born in Massachusetts in 1789 might hope for something less than thirty-five years of life; his modern prototype can count on a good sixty years. This magnificent advance can be credited largely to the doctor, although the engineer, the business man, the farmer, the teacher and others have made their contributions. Unfortunately the gain is more apparent than real to those of us who are now adults, since it was achieved in large part by the reduction of infant mortality. Among the children's ailments for which the mortality rate has been decreased are measles, scarlet fever, whooping cough, diphtheria, pneumonia, meningitis, tuberculosis, bronchitis, diarrhea and enteritis. While many of these ills are not the exclusive possession of small children, the reduction of their death rate has helped children particularly.

In addition to children's diseases, certain adult troubles have been decreased or eliminated. For example, the death rates for pneumonia and tuberculosis have declined notably for all ages. Certain contagious or

infectious diseases, such as scarlet fever or yellow fever, have likewise been almost eliminated. The only really serious recent epidemic was that of influenza in 1918, which was sufficiently important to produce a visible increase of the death rate for the entire country.

Having paid the necessary respects to the accomplishments of medicine, it is then necessary to admit that the help given to children has had no real counterpart for the older people. While the present day boy baby can expect a much longer life than could his predecessor in the time of George Washington, his father has much less advantage while his grandfather has still less. The older the man the less advantage he has over his predecessor, so that by the time he passes sixty his life expectancy is actually less than of a man of 1789. Incidentally one may add that similar statements can be made about a woman, except that at any age she has a longer potential life than her male contemporary. With men generally marrying women younger than themselves, there should presumably be more widows than widowers—which is actually the case.

The diseases that have shown notable increases within recent years are cancer, diabetes, heart trouble, diseases of the arteries. Of lesser importance are automobile accidents, appendicitis, suicide and homicide. Of these troubles, heart and artery ailments are distinctively the troubles of middle-aged and older people, while cancer probably may be so considered also. The rise of the diabetes rate may represent no more than a greater efficiency of diagnosis, and this same comment may be made concerning some other ills.

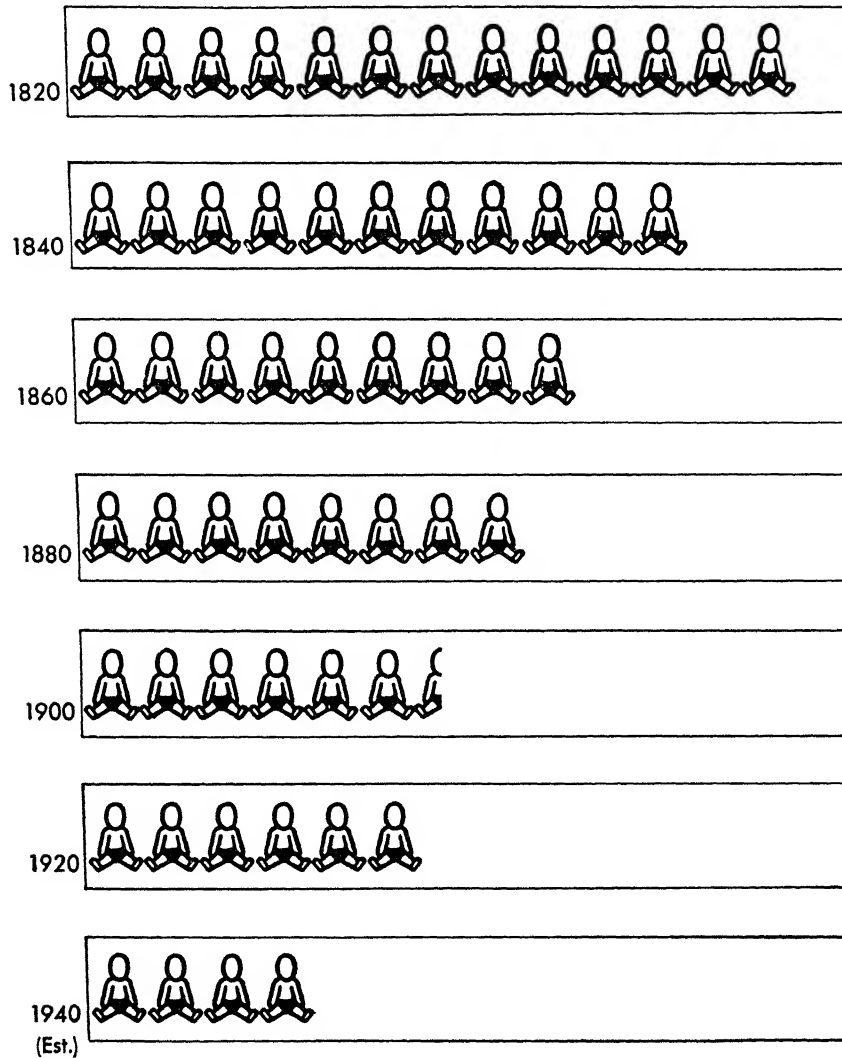
The rise in the mortality rate for diseases affecting older people is not necessarily very significant. Death is the common lot of all mankind, so that if the person overcomes childish ills he will in time be caught by something else. The comparatively high death rate among older people indicates merely that more people live to maturity—many men and women now survive to moderately ripe ages who a generation or more ago would have died as children. In spite of this optimistic statement, however, the medicine of tomorrow will probably place increasing stress on the conquest of ills that particularly affect middle and old age.

A further decrease of the death rate in the future is likely, but there is no probability that the notable achievements of the past century will be repeated unless we find several fountains of eternal youth. Presumably the life span will increase, but at a much slower rate.

Birth Rate

The birth rate is the only really flexible factor in the population of the future. Immigration is limited by law. The death rate can be reduced but little and even then is not particularly responsive to individual desires—everyone desires to live and tries his best to attain his goal, except for the few suicides and for that mass suicide that we call war. On the other

THE CHANGING BIRTHRATE

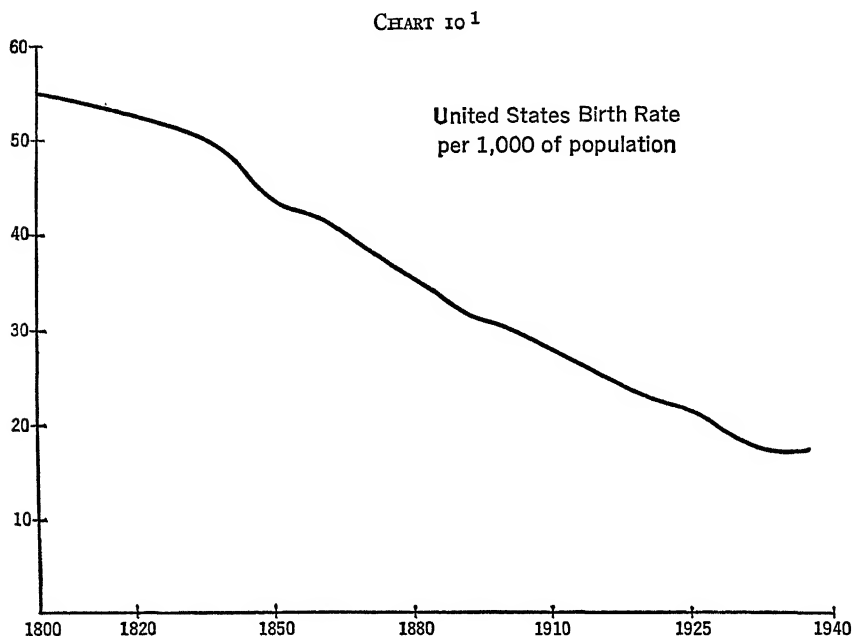


Each symbol represents 100 children under 5 years
per 1000 women (20-44 years old)

[From Bernhard J. Stern, *The Family: Past and Present*, a publication of the Progressive Education Association (D. Appleton-Century Company, Inc.). Pictograph Corporation.]

hand the birth rate is highly flexible, and in most cases can be adjusted according to the wish of the individual. Human birth rates of 50 or more per year per thousand of the population have existed frequently and even then do not represent maximum human productivity, while on the other hand human fecundity can be reduced to the vanishing point.

Historically, birth rates have tended to remain stationary or to decline throughout the entire period of recorded figures. The decline for most countries was very slight until well into the nineteenth century, although France seems to have started its long down hill slide in the 1840s. Western



¹ Figures before 1915 are estimates in W. S. Thompson and P. K. Whelpton, *Population Trends in the United States* (McGraw-Hill Book Company, Inc., New York, 1933), p. 263; after 1915, from census figures.

countries such as England, Belgium, Germany, Holland, Norway, Sweden and Switzerland declined notably from the '70s. Hungary, Italy and Russia maintained their high birth rates longer, but by the early twentieth century they had all joined the downward trend. This decline in the birth rate was of course accompanied by a decline in the death rate.

For the United States there seems to have been a fairly steady decline of the birth rate throughout the nineteenth century, even if allowance is made for the probable inaccuracy of the figures.

The basic causes for the decline of the birth rate are two—(1) health, and (2) social and economic status. The health factor can be stated more easily. Pregnancy and parturition are neither easy nor pleasant for most

women, but more important childbirth is one of the more hazardous occupations of the world. For great-great-grandmother it was all too frequently fatal, with the result that great-great-grandfather's grave is often encircled by those of two or more wives. The annual child which was customary a century ago often brought debility, sickness or death to the overburdened mother. Modern parents are more and more concerned in avoiding this danger by having fewer children and by having them adequately spaced.

While the dangers of childbirth are real and great they are often overemphasized. Many a woman has an almost pathological fear of pregnancy—a fear that is reinforced by every tale of woe and pain and sorrow and death that she hears throughout her life. Regardless of whether or not her fear is justified it has a real and important effect in producing the troubles with which it is concerned. Pain and danger are more likely to occur when they are expected than when they are not feared.

An increasing number of parents also are reluctant to accept the economic and social sacrifices entailed in having large families. When every American was a farmer he had room for children to run and play, and had tasks to give them from the time they began to toddle. In fact the child was an economic asset since the cost of his rearing was not as great as the value of the labor that he contributed until he came of age. Even after he married and had a family of his own he still possessed potential utility, for presumably he would take care of his parents when they became too old to work.

Today the majority of parents live in towns and cities, and children represent a definite economic liability in many cases. Even the cost of bringing a child into the world has increased with the greater accessibility of doctors and hospitals. City space is expensive, and a large family means expanded living quarters or unwholesome crowding. Compulsory education has reduced the value of the child's labor by keeping him in school for some of the years that in the past he worked for his father. After leaving school the child tends to get an industrial job and spend his own pay; the custom of working for father until he has become of age has declined. Even as an aid to aged parents the value of the child has declined, as the various public old age pension schemes bear witness.

The changing status of children should not be overemphasized, however. For many families children still represent an economic asset. Many a child goes to work as soon as the state law permits and turns his entire pay check over to his parents, being given only enough for spending money. Such an arrangement is particularly customary for a daughter and may be continued long after she has come of age. During the recent depression many children have supported their parents, and the dangerous practice of parents living with their married children has by no means disappeared.

The cost of having children is but one deterrent for the large family. Numerous progeny put in jeopardy the family automobile, the new dining room furniture and trips to the movies. The numerous Smiths have still more trouble in keeping abreast of the childless Joneses. Dinners and parties become more difficult economically and also less possible physically if the apartment or house is full of children. The larger the family the more difficult to save for investment and the more hazardous the gamble of a new job. Husband keeps his nose pressed more closely to the grindstone while friend wife drops her old activities and friends—caring for a large family does not permit the funds or time or strength for the social activities enjoyed before marriage.

The trend toward the small family has been reinforced by the growing independence of women. Many a girl before marriage earns at least as much as her prospective husband. With marriage she often keeps her job—presumably as a temporary expedient until the couple is sufficiently well off to have her stay home and rear children. For many families this happy utopia is never attained—at least in their own minds. Possibly unemployment or sickness enters the scene; at any rate they never really feel economically competent to have children. The longer the first child is postponed the smaller the total family.

Parents also often limit the size of their family for the benefit of their children. Most parents are exceedingly anxious that their children have more opportunities than they themselves have had. Such opportunities are dependent on an income sufficiently large to provide the children costly education and to free them from economic pressure. Particularly in the middle economic groups a large family and proper educational opportunities are considered incompatible. Neither the rich nor the poor are affected so much; the rich need not worry about funds while the poor expect their children to work as soon as they are able.

These factors have made the small family so common that in certain social groups anything else is considered not only surprising but faintly blameworthy. In these groups even as few as four children may cause friends and neighbors to view the parents askance and cause the parents to blush apologetically. With this situation the small family system has become so customary as to force conformity by those who would have done otherwise if left to their own preferences.

Limiting Births

The basic forces producing small families are of no importance unless the individual has available the means to produce the desired result. Since the birth rate has been declining for many years it is evident either that people have long been able to limit their own reproduction or that psychological or social forces have produced the result without conscious human action. Particularly in the United States is it evident that further explana-

tion is necessary for the understanding of the long and steady decline of births.

The oldest means of limiting population were abortion and infanticide. Probably neither practice has increased within the past century, although adequate statistical information is lacking. Guesses at the number of abortions per year in the United States have been as high as 1,500,000, which seems ridiculously high in view of the slightly over 2,000,000 live births; a fairly moderate estimate is that some 20% of pregnancies end in abortion. There is no reason to think that the proportion is increasing. Guesses as to the amount of infanticide are still more nebulous, but there is no reason to think that the number is large or increasing. An increase of infanticide would not in itself lower the birth rate, but such might be the effect if the increase represented an increase in the death of illegitimate and unregistered children.

A long established method of reducing births has been the restriction of marital intercourse, sometimes going to the extreme of long periods of abstention. In primitive groups such abstinence has usually been ritualistic and has not been designed primarily to limit births. With more highly developed civilizations such abstention has frequently arisen from religious or moral or health considerations. There is now sufficient evidence to demonstrate that any abstention, even for comparatively short periods, reduces the birth rate, but there is no evidence that this factor has been important in the general decline of the birth rate. With the decline of ritualistic, moral and religious forms within the past century the presumption is that such abstention has become less frequent.

With the development of a high speed industrial civilization the hypothesis has been advanced that the resulting increased nervous tension has lessened the fertility of women, and this speculation seemed reinforced by the tendency of the most cultured women to have the fewest children. Even more intangible is the theory that races rise and decline in fertility much as do individuals. Modern investigation has found no support for either theory, and seems definitely to have disproved the former.

A lower birth rate would result either if fewer women married or if the average age of marriage increased. Both of these possible explanations are contrary to fact. Each census has shown a larger proportion of Americans in every age group married. Furthermore the average age of marriage has declined fairly steadily until 1920; whether the slight increase after that date is temporary or permanent only the future will show. Presumably modern industry permits the average neophyte to attain within a short time the same skill and wages as the older initiate, and thus to marry younger than did the farmer's son of long ago. This tendency is reinforced by the failure of the modern father to insist upon his rights over the earnings of his minor children and by the tendency of young wives to continue to work after marriage and to postpone having children.

Birth Control

The elimination of alternate explanations leaves only the increasing use of contraceptives as the explanation of the decline of the birth rate. While contraceptives have been known for many centuries their important advocacy and spread have been confined to the past hundred years. The first American books advocating the control of births and describing contraceptives were published in 1830 and 1832, and one wonders whether the rather rapid drop of the birth rate between 1840 and 1850 (see chart) had any connection with this fact. The spread of birth control information during the nineteenth century was slow since Victorian society considered (at least publicly) contraceptives immoral. Descriptions of their use were classified as pornographic literature and banned from the mails. The issue was brought to life on a notable scale in England during the 1870s, and one again wonders whether the coincident beginning of a rapid decline of the English birth rate was connected with this revival.

The American birth control movement became of vital importance with the work of Mrs. Margaret Sanger, a nurse by avocation, who was exceedingly impressed by the conditions of the New York slums and the evils of uncontrolled reproduction. Mrs. Sanger undertook her work in 1912 and was responsible for the American Birth Control League (1914) and the *Birth Control Review* (1917). Her special interests were to obtain permission for physicians to prescribe contraceptives in necessary cases and to establish birth control clinics under medical auspices. Her contemporary, Mary Ware Dennett, who formed her Voluntary Parenthood League in 1918, was more interested in making contraceptive knowledge available to the general public.

The troubles of the early birth control advocates were many. They were classified with purveyors of salacious books and producers of strip-tease burlesque. In fact they were lucky if they kept out of jail. Opponents claimed that a knowledge of contraceptives would encourage widespread immorality, since there would be no fear of an illegitimate child to deter straying toward the broad and easy path. In addition they felt that contraceptives would profane and cheapen the marriage bed and be harmful to their users. Religious sanctions were imposed to assert that the denial of life was a crime both before man and God. A profligate and depraved world seemed inevitable to the opponents of birth control if the use of contraceptives became general.

The proponents of birth control were inspired by the vigor of the opposition to claim much more than was justified. If they had stuck to the personal effects upon the health of the mother and to the economic and social advantages to individual families their contentions would have been supportable. If they had merely insisted that properly used contraceptives produced no bad physical effects and no additional immorality they would

have been fairly justified. But in addition they argued that birth control would mean an important lessening of poverty, crime, slums, unemployment, insanity, feeble-mindedness and other undesirable mental and social traits. They even claimed at times that there would be no lessening of population growth since the increased health of the members of small families would more than compensate for the lack of babies. The truth seems to be that any social or eugenic improvement resulting from birth control is quite negligible if not non-existent. Our economic and social institutions are not reformed by having fewer children per family. Even more important, there has been an unfortunate tendency for the more desirable classes of society to use contraceptives most, while the feeble-minded and other undesirables are impervious to either social or personal arguments for small families.

Regardless of whether the arguments for or against birth control are the more cogent, the fact remains that people have desired contraceptives and have been willing to use them. Starting with the upper social and economic groups the knowledge has worked down through the nation, so that probably contraceptives are at least as well understood as baseball or the writing of checks. A recent estimate holds that at least 70% and probably more of educated people use contraceptives. The exceptions for the population as a whole seem to be mainly people who either have as yet heard of no cheap and effective contraceptive or who have moral scruples. While a good many of the churches have endorsed the birth control movement there are still certain sects that oppose. They continue to maintain that the Biblical injunction to be fruitful and multiply still applies. The attitude of the Catholic Church has been of particular importance to many people. This church has in the past and continues in the present to oppose contraceptives of a mechanical or chemical nature, holding them to be an undue interference with nature and hence unnatural and immoral. On the other hand the Church approves other methods of limiting births, as for example the method described in such a book as *The Rhythm* (1932), so that it cannot be said to oppose birth control entirely. The American Medical Association has recently (1937) accepted the use of contraceptives and information is given in some forty-five medical schools.

The increasing acceptance of birth control by the American public is made clear by the wide sale of contraceptives, which are even advertised and endorsed by several of the popular women's magazines. Up to date, however, religious opposition has prevented the modification or repeal of prohibitory state and national laws, so that we have the anomalous situation of officially banning something that in practice we use. Following good American custom, we resolve our difficulties either by flouting the laws with the connivance of enforcing officers, or by reinterpreting them judicially until the original meaning is gone. In this connection a

decision of the United States Circuit Court of Appeals in 1936 is considered a landmark. Possibly the future will see sporadic efforts to enforce the anti-contraceptive laws, but the fight against them has virtually been won. Contraceptives are now sold fairly openly in most places, while nearly four hundred birth control clinics cater to those people who either are ignorant on the subject or who have insufficient funds. Presumably these clinics may be restoring the eugenic balance by reducing the birth rate of the lower economic and social classes. The day of the voluntary family is practically with us.

Efforts to Increase the Birth Rate

Since the use of contraceptives is a matter of individual choice and since in consequence the birth rate is adjustable, it is here that the real modern problem arises. If matters are allowed to take their own course there is little question that the birth rate will continue to fall until total population begins to decline. Whether or not this prospect pleases is a matter for argument, but the efforts to halt the process are of immediate interest. Least possible is the attempt to prohibit the knowledge of contraception—a procedure about as hopeful as trying to dam Niagara Falls half way down. The only real alternative is to try to offset the trend toward smaller families by making the opposite seem more attractive. Various European nations have moved in this fashion. The first and most obvious attack is to sentimentalize about the good old-fashioned family—its happiness and community of interest—as compared with the modern parents and their single and pampered child. Appeal can be made to patriotism—to produce more sons for the glory of the fatherland. Such appeals may be very dramatic and may even be somewhat successful for a limited time. Unfortunately (or fortunately?) men and women find difficulty in keeping themselves worked up to the emotional pitch where they make real sacrifices for the group.

More positive action is probably necessary if large families are to be encouraged. The President of the United States, the Premier of France or another important dignitary may congratulate publicly the mother and father of an outstandingly large family, thus presumably bringing prestige and honor to the family and encouraging other families to emulate the good example. Taxation preference may be given depending on the size of the family or particularly heavy burdens placed on bachelors. There is also the idea of a "stork derby," with a thumping prize for the winner.

Many suggestions have been made that the economic sacrifice of having a large family be lessened by making rates of pay vary with the number of children. To be successful this plan must be subsidized by the state; otherwise employers would give preference to the less costly bachelors and the fathers of large families would merely end on the relief rolls. Any such subsidy might of course be paid in a lump sum or spread through

the nonage of the child. A smaller move in the same direction would be to give special consideration to married women who are employed for wages. At present a girl may hesitate to get married, or once married may not have children because of the fear of losing her job permanently and thus declining in the economic scale. Proper periods of leave on pay, free or cooperative nurseries, and some financial assistance for the care of small children, might help the situation. Possibly financial aid by parents to young married couples might sometimes be desirable.

Any plan to encourage larger families assumes a general desire to increase the size of the family, and about this point there is much difference of opinion. Even if larger families are desired there is some question whether any modern nation can afford the cost of bribing people into having children that they would normally prefer not to have. The feeling is growing that we have entered a period of small families and declining population, and that regardless of our feelings one way or the other we might as well make up our minds that they are here to stay and make the best of them.

CHAPTER 41

PEOPLE ARE DIFFERENT

Merely to state the total increase or decrease in the number of people is to tell but a small portion of the population story. Total numbers are of course important, but even more significant is information as to the kind of people who will be the citizens of tomorrow. Will they be smart or stupid? Will they be born and reared in the country or in the city? Will they move restlessly from place to place or will they remain static? Will they be the children of the native-born or of the foreign-born? Will they be black or white, or perchance red, yellow or brown? Will they be young or old, men or women, married or single? All of these groups will undoubtedly be represented in greater or lesser numbers in the America of the future, but can we predict with even a fair degree of accuracy which of them will grow stronger and which will become weaker?

Differential Birth and Death Rates

The birth and death rates of today are the evidence upon which we base our guess concerning the future. One assumes, and probably correctly, that the trends of the past will continue into the future in most cases, subject only to minor fluctuations. While such trends are probable there is always the possibility that new conditions will produce entirely new results. Batting averages of one year are only suggestive and not conclusive as to what will happen the next year. The bigger the unit, the more probable the generalization.

The American people as a whole have been declining in their rate of growth, but this statement does not mean that all groups have been declining with equal rapidity. While some classes of society have been moving rapidly along the road toward their own elimination, others have been growing lustily. The latter groups will presumably furnish more than their fair share of tomorrow's population.

There is common knowledge that as between the native- and foreign-born that the foreign-born have the higher birth rate, and yet there is little probability that the foreign-born will produce an undue proportion of the population of the future. Under present immigration laws the flood of foreign arrivals has been reduced to a very thin trickle, with the prospect that another generation will see the practical end of the foreign-born as an important factor in American life. In addition, the birth rate of the foreign-born has been falling—partly because most of them are

becoming older, but also partly because they are becoming imbued with the small family tradition of America.

The children of immigrants likewise have a declining birth rate, and again probably because they are accepting the current native practice regarding contraception and are hence having smaller families. They and their children are becoming indistinguishable from those of us who have been here longer. Even now the athletic teams of the "fighting Irish" or "fair Harvard" or many another school are sprinkled with names composed largely of the letters k, y and z, but whose owners look and act exactly like other American boys of the same age.

Races of non-white complexion also seem to be declining factors in the American population. Chinese and Japanese now number only some 200,000, and the possibility of any considerable increase seems infinitesimal. Filipinos are also few in number and further arrivals will presumably be stopped when the islands attain their independence. To offset these small figures one should remember that they do not include children born in the United States, and that consequently the yellow and brown groups are both larger than the statistics indicate. Even with the proper allowances, however, there is no reason to think that they will ever be a numerically significant section of the American public. (For a further discussion of these three groups see the chapter on "Restless People.")

The red race—the American Indian—numbers about a third of a million and is largely concentrated in a few areas. The Indians do not constitute a "vanishing race," since they are increasing. The increase is slower than that of the whites and consequently the Indians are a problem of declining importance. Historically Indian-white relations have been generally unhappy—at least for the Indians. Until well into the nineteenth century the Indians were merely driven farther and farther west as the whites wanted the land. For a time during the second third of the century, there was a hope that the Indians had been pushed sufficiently far to keep them permanently isolated from the whites, but this hope proved entirely wrong.

The late nineteenth century saw the Indians being concentrated in reservations. Efforts were made to teach them white methods of life, with the expectation that in time they would own their land individually and practice the white type of farming. Within the present generation this policy has again been changed. Reservations are now being expanded, and efforts are being made to restore the primitive type of tribal organization, to retain old Indian customs and to hold to a common ownership of land. Which way the pendulum will finally swing is at the moment shrouded in obscurity. The final solution may well be influenced by the fact that the Indian is the colored race most acceptable to the whites. Members have entered the professions and been elected to public office, so that there is at least a faint possibility that the future may see the amalgamation of the two races.

The most important non-white race in the United States is of course the Negro. The Negro birth rate is high and some people have professed to be disturbed by this fact. Such a fear is entirely unjustified unless the Negro death rate should decline markedly, for in the past the death rate has more than offset the birth rate, so that the Negro has been a declining element in American population. Between 1790 and 1930 the percentage of the Negro in the American population was cut in half, the figures for the two years are respectively 19.3% and 9.7%. The total Negro population of 1930 was approximately 12,000,000 (For a further discussion of the Negro see the next chapter.)

Economic Groups

More important than differences between races in birth and death rates are the distinctions between various social and economic groups. Best known is the fact of the comparatively high birth rate of the poor—"the rich get richer and the poor have children." The procreation of children has at times been claimed as one of the chief pleasures of the poverty-stricken, although there is some doubt as to whether it is an unalloyed delight. While the general birth rate tends to fall during a period of depression, that of the portion of the population on relief remains well above the average.

The reasons for the high birth rate of the low income classes are largely speculative at present. Some of the poor are also stupid, even to the extent of feeble-mindedness, and the average is inferior in education; probably many such people either do not know of any effective contraceptive, can not afford it, have religious or moral scruples, or are too lazy to use it. There is certainly considerable difficulty in speculating that people immersed in poverty are anxious to fill their houses with children in the long distance hope that some day these children may be profitable economically. The large family actually helps to keep itself in poverty rather than improving its condition because of the earnings of the children.

Generalizations about the characteristics of the poor are at best dangerous, since poverty is not an hereditary trait following Mendelian laws, nor is it a crime or a disease. Furthermore a poor home is no proof that the child may not be an admirable addition to American population, with brilliance of intellect and the best of morality. Many of our outstanding public figures have come from homes that faced the most bitter of struggles against economic adversity. The only problem is that the poor family tends on the average to give its children a somewhat poorer start than the children of families in more comfortable circumstances. Inadequate food, clothing and shelter hardly equip the boy or girl either physically or psychologically for his best efforts. Education is scant and the child must fend for himself at an early age. Delinquency and crime are more probable than valuable social attainments.

The best answer to the high birth rate of the poor would be to eliminate poverty, but at the moment such an answer appears quite utopian. Even under present conditions, however, public agencies are increasingly taking care of the physical and recreational needs of the children, and presumably this care will be expanded in the future, so that poor children will be less handicapped. There is also every reasonable expectation that birth control methods will soon be universally available and that in consequence the birth rate of the less favored groups will start to descend.

The economic group having the smallest families is the middle class, since for this group the economic strain of having children is the greatest. The poor man can depend on public parks, playgrounds and clinics, with the ultimate possibility of public relief. The rich man need not worry about the cost of children. But the middle class father pays his own way even at great sacrifice to himself. The local grocer or drug store proprietor or skilled artisan or doctor feeds, clothes and houses his children with commendable zeal, and educates them frequently to the extent of an expensive college career. The result is all too frequently the childless family or the spoiled brat family composed of a single child born in the middle age of its parents. This condition seems particularly bad because we have long agreed that the middle class family is most typically American and can provide the physical and cultural heritage that we most desire to transmit to the next generation.

To let nature take its course and hope that by some mysterious operation of the laws of nature that the middle class will in the future produce more children is futile. Even an increase of average income would probably be ineffective, since the desires of the middle class have always been far in excess of its means, and will probably so continue unless we all attain the Midas touch. If larger families are to be encouraged, direct and drastic action of a sort now unknown must be taken. At present one can only hope that the children of the poor will be able satisfactorily to take the place of a declining middle class.

Differences of Education

The birth rate also differs between the educated and the uneducated, with the advantage going to the uneducated. As with poverty, the lack of education is not hereditary, each child must be educated for itself. Likewise one can not assume that the ranks of the educated include all of the intelligent and diligent, or that education is the exclusive monopoly of formal schooling. Education still depends as much on the social and economic status of the parents as on the native ability of the children. On the other hand highly educated parents tend to produce cultured homes which are desirable for the rearing of children. Intelligence tests classified as to the type of home background show better results for children from well-to-do homes than for those from poor homes, and while skepticism

has been advanced as to whether innate ability alone is tested, the results still show the advantage coming to children of comfortable homes

Particular concern has been felt at the failure of college graduates to reproduce themselves. Such favored individuals marry less often than the average of the population—the women marry even less frequently than the men—and produce fewer children. If formed into an isolated group college graduates would dwindle and disappear. The guess has been made that the college woman marries less frequently because she creates a mentally ideal husband who can not be found in practice, while at the same time her ability to support herself after college decreases her need for the ordinary and garden variety of man. Probably more important is the fact that college education makes marriage improbable until at least the age of twenty-one or two. The longer the period of education the more rigid become bachelor habits and the less the chance of marriage, while the later the age of marriage the fewer the children. Many college men and women take further educational work, as in the training for the professions, thus still further delaying the time of marriage. Then too these college people know about contraceptives and will not have children until they can be supported in a rather elaborate style. Altogether, the hope for large families on the part of college graduates is rather slim.

The opposite side of the story is that a larger proportion of college graduates now marry than was the case in the past, and that the number of their children is increasing. Probably the frequency of marriage and the number of children is not much different for college graduates than for non-college people of a similar social and economic status. This situation has resulted in part because college education has become so widespread that it no longer implies a rather peculiar type of boy or girl.

The whole story of the birth rate of the educated is really but one chapter of the situation of the well-to-do. While education and wealth are not inseparable, there is a close statistical correlation. The children of the upper income receivers ordinarily attain both education and economic competence. In consequence the powerful groups in America tend to perpetuate themselves—a condition which might produce a fairly rigid class system were it not for the frequency with which individuals go either up or down the social and economic scale. Luck of birth has a definite importance in the chance for success, even though it is not the only factor. From this point of view it may be fortunate that the upper classes do not produce enough children to replace themselves, for thereby the chances of the poor and intelligent and ambitious are increased.

City-Country Differentials

Probably the most important difference in birth rates lies between the farmer and the city dweller, with the country far in the lead. Not only is it true that scratching a city man produces the farmer underneath, but

this situation seems likely to continue as long as we have cities. The larger the city the lower the rate of reproduction. Cities of over 25,000 would evaporate of their own lack of fertility unless replenished by rural stock. Rural people more than reproduce themselves, even though some considerable share of farm children are credited to the city which contains the hospital in which the child first saw the light of day.

Various explanations have been advanced for the lower birth rate of the city. With space at a premium, with all food bought by the pound and not grown in the garden, and with cultural and recreational facilities more expensive, the answer may be economic. Some speculation has also been advanced that the tempo of competition is keener, so that mother requires a more complicated hair-do, father a sharper crease in his trousers, and the couple a swankier car than in the rural areas, but this speculation seems of doubtful validity to those who have been reared in the social competition of a small town or of the country. The answer may well be simpler—merely the availability and social acceptability of the use of contraceptives. Certainly the necessary information and equipment is more available in the city. Likewise the city is less influenced by traditional moral and religious codes. Socially the small family has been much more thoroughly accepted in the city than in the country.

A higher country birth rate is reinforced by a lower death rate. The lowest death rates of 1937 were in North Dakota, Oklahoma, South Dakota, Arkansas, Idaho, Utah, Nebraska, North Carolina and Minnesota, in that order. The industrial states with the large cities ranked lower. Connecticut was tenth, New Jersey fourteenth, Michigan twenty-second, Illinois twenty-third, Pennsylvania twenty-sixth, New York thirty-fourth and Ohio thirty-fifth. The bottom of the list was composed largely of states attracting older people or invalids, as Florida, Colorado, California, New Mexico and Arizona, or states in which a low birth rate over a long period has produced an older age composition, as Vermont, New Hampshire and Maine.

The better death rate showing of the rural areas may be discounted somewhat because the city hospitals attract rural invalids, and deaths are listed by the place of death and not by the normal place of residence. Furthermore many a Kansas or Nebraska farmer ends his days in Chicago, New York, Los Angeles or St. Petersburg. On the other hand the city attracts many healthy farm boys and girls in the prime of life thus lowering the city death rate. In spite of any possible modifications, however, farm life is undoubtedly a better preparation for a ripe old age than is city life.

The obvious explanation of farming longevity is active exercise in the open air. Certainly the city has better health service, hospitals, sanitation and doctors, which means that its citizens are less subject to germ diseases such as scarlet fever and malaria, and have fewer remediable defects such

as diseased tonsils and defective vision. Where the city fails is with cancer, nerve troubles and heart diseases. To what extent such ailments are functions of city life is uncertain, but some connection seems probable.

Differences in rates of population growth may be found between geographical sections, but here natural increase may be obscured by migration. Between 1930 and 1940 the fastest growing states (over 20%) were Florida, New Mexico, California and Nevada, in that order. None can credit the result to its birth and death rate. Those showing increases from 10 to 20% were Idaho, Arizona, Oregon, North Carolina, Louisiana, Tennessee, Maryland, Delaware, Texas, Washington and Virginia. The states declining in population were Vermont, Oklahoma, Kansas, Nebraska, North Dakota and South Dakota, arranged in order, with the greatest decline (7.5%) belonging to the last of them. All but one were affected obviously by the dust bowl migrations, which in turn accounted for the expansion of several of the more rapidly growing states.

The claim has been advanced that birth rates are highest in those states with the lowest cultural-economic levels. Any such generalization is of course debatable in its use of terms, but even if accepted it means no more than is usually stated in another way. High birth rates have been associated with the poor and the uneducated. This situation creates a social inefficiency in transmitting the best traditions of our society, even admitting that these high birth rate classes may well produce intelligent and able children.

Birth rates may also vary as between religious denominations. Some churches are small in membership and primarily upper class and urban in appeal, such institutions probably are less prolific than the groups having their greatest appeal among the lower economic groups either in the city or in the country. In addition certain churches have frowned on birth control measures, and while the entire body of their communicants has not proved impervious to the influence of the sinful world, their birth rates are still probably high. Possibly the social and economic character of their membership has been even more important than the influence of the church.

Totalling these birth differentials leaves many people with the unpleasant conclusion that the least desirable elements of our stock are breeding most rapidly and will inherit—if not the earth—then at least the United States. While this situation may be far from inevitably bad on the basis of our present knowledge about heredity, there still comes the conclusion that in environmental influences we are not doing everything possible for the coming generation. Not only has an undue proportion of children poor homes and bad living conditions, but educational facilities are poorest where they are most needed. The rural and small town schools, that will educate the majority of the coming generation, are usually poorer in equipment and instruction than their city neighbors. In one sense the country is training the future citizens of the cities, and there may be

some fairness in the cities bearing part of the expense. This end is being approached by increasing federal educational grants, which are used largely for rural schools.

Age Composition and Problems of Youth

Declining birth and death rates inevitably produce an older population, and this trend is reinforced by the decline of immigration. Fewer children are born and fewer young and middle-aged people die, which means that the average age of the population is rising, with the end by no means in sight. Census figures show that all age groups under 30 have been declining in relation to the total population; for example children under five composed 15% of the population in 1840, while in 1930 the percentage was 9.3. At the other end of the scale, those of forty-five and older totalled 12.5% of the population in 1850, but by 1930 had increased to 22.9%. The present prospects are that both the birth and death rates will continue to decline, with a consequent increase of the proportion of older people.

The effects of this change in age may be almost infinite. The city school systems should show their first victories in the long battle to provide sufficient seats and teachers for their students. Unless the cities grow from migration to an unexpected extent the lower city birth rate should decrease the pressure on elementary and secondary schools. In time the same trend may appear in the rural districts, but for the immediate future the rural schools will be as hard pressed as ever.

Declining numbers of children will affect the colleges in time. The past generation has seen a spectacular increase in the number of college students—in fact a college education has become part of the folkways of considerable classes of American citizens—but whether the contagion of the desire for college training will continue to infect other groups sufficiently to offset a decline in the number of potential students is anybody's guess.

A decline in school population might theoretically lead to an improvement in the quality of education, but several factors work the other way. Every school district feels poor and tends to cut rather than improve services if opportunity offers. Furthermore, any saving that comes from reduced numbers may well go into longer and more specialized training rather than into better teaching. Business and the professions are daily insisting on greater proficiency and this demand goes back to the schools. The result is more years of training, particularly between the ages of seventeen and twenty-four, and more specialized school equipment.

Furthermore the demand for adult education is increasing notably from year to year. More and more people are becoming disturbed by a world complexity that seems to postpone indefinitely the utopian dreams of an earlier generation. These people are demanding and receiving more information on a great variety of subjects. Then too the invention of new

industrial processes with the consequent rise and decline of specific industries creates a demand for technical training and retraining to permit men and women to shift from dying to live occupations. Here again the cost of education is increasing.

The education of the immediate past has provided an ever increasing flood of youth trained for white collar positions, until there is some question whether there can ever be sufficient jobs to go around. Potential doctors and lawyers and business executives become a drug on the market, which means that during the past decade these well-trained young people have had serious economic difficulties. More dentists or veterinaries or registered nurses may be highly desirable, but at present our economic and social system does not provide funds to pay them adequately.

The lack of opportunity for highly trained young men and women to obtain proper openings is but the lesser part of our youth problem. Millions of young men and women have not been able to find work of any kind. Part of the surplus has embraced higher education either as a stop-gap occupation or in the will-of-the-wisp illusion that there is a better demand for highly trained people. Others have entered a life of loafing, with its obvious demoralization, while still others have obtained government employment, as in the C C C. camps. The often expressed fear that youth will displace the older age groups from industry has not as yet been realized. The tendency has rather been for the older people to monopolize the existing jobs.

Problems of Middle Age and Old Age

More discussed than the problems of youth are the difficulties of father and grandfather. The increase in the number of people over forty-five presents at least a potential industrial problem. Mechanized industry presumably favors the young man who has greater coordination of eye and muscles, and particularly when the skill involved is comparatively small. More old people may mean the slowing of industrial efficiency or more old people on the relief rolls. Some industries have looked askance at hiring new workers who were over forty-five since such employees learn new occupations more slowly than do younger people. On the other hand, however, there is no evidence of important industries which have followed the policy of firing older men and replacing them with younger men.

A greater proportion of old people will mean inevitably an increasing emphasis on old age allowance and pension plans. Few people over sixty are self-supporting and there is no reasonable hope that the situation will improve. Their increasing number produces an important political pressure group. Even today their influence is far from negligible, for not only do they themselves want help but their families and friends are glad to have the government assume the burden of their support. While such schemes

as the Townsend Plan or the Ham and Egg Plan have not won majority support, they have indirectly helped in the installation and expansion of the various social security schemes now in existence

An older age composition may also influence industry in terms of consumer demand and therefore in management policy. The obvious decline in the demand for tricycles and the increasing demand for false teeth hardly needs statement. Some people feel that there will be less demand for swing and more for symphonies, less for roadhouses and dance halls and more for libraries and museums, less for splashy roadsters and more for sedate sedans, less for alcohol and more for medicine. Such changes may be doubted if one surveys the bald heads at the frothiest and girliest of musical shows, or the predominance of middle-aged butter and egg men at the hottest night clubs.

Possibly some change will be visible in amusements. The tendency in modern America has been to emphasize commercialized spectator sports, in which a hundred thousand watch a football game or a boxing match, or other thousands attend the movies. Whether this tendency will increase with the greater average age of the population is any one's guess according to his understanding of psychology. Some trend is observable for people to spend at least part of their increased leisure in making gardens, painting pictures, playing soft ball or pursuing some other active occupation. More future leisure, together with greater earnings (we hope) and an older age composition will certainly increase the importance of leisure time activities as well as change their character.

The future may well be more conservative than the past. America has gloried in being a young man's country, where changes were rapid and where the dead past was not permitted to smother the living present and future. While by no means every young man is a flaming radical or every older man an economic and social royalist, common experience holds that age brings caution—one has property and position to maintain, has accepted current customs more thoroughly, realizes dangers and pitfalls more clearly, and is less enthusiastic about taking chances with the enduring present. As the proportion of the elderly increases and as work becomes still more specialized, thus requiring longer training, the time may come when all industrial concerns are dominated by elderly men more interested in creating stability by combination to avoid dangerous competition than in fighting a life and death struggle for advancement. Even now there are indications that business values security more highly than the hazard of potential wealth or bankruptcy.

Conservatism need not be confined to economic matters. School systems may be even more averse to disseminating ideas which are disturbing to existing institutions. Ministers may still further isolate their teachings from the realities of modern life. Politicians may increase their hostility to disturbing political doctrines and feel still more certain of the distinc-

tions between an eighteenth century revolution and a potential modern one.

The increasing conservatism of American life is plainly evident, even though its exact relationship to the age composition of the population may be subject to doubt. America is now a mature industrial nation, with an overseas empire and an established and vulnerable world position. The modern drive toward security is partly the reaction of people inhabiting a world which seems to have slipped from their control, but is also the reaction of the elderly rich man with possessions which he fears he may lose.

Sex Differentials

One of the most curious characteristics of population is a surplus of women. Not that more girl babies are born than boy babies, however, for the opposite is the case. For some unknown reason mothers produce more male than female children—in approximately the ratio of 106 to 100. This male surplus is soon reduced by a higher male death rate, with a consequent excess of women except in such rare situations as on the frontier, in steel towns or among newly arrived immigrants. By the age of twenty-five there are more girls than boys, and female dominance increases as age advances, by the age of 75 each hundred women can find only eighty-nine male contemporaries (based on figures of 1919-20). Presumably men have more dangerous occupations and possibly they take poorer physical care of themselves. The disproportion of the sexes may well increase, since although typical male machine hazards are being reduced, there will probably be an even greater reduction of maternal mortality.

The effects of this difference in the numbers of the sexes is obscure. Quite obviously there will be more unmarried or widowed women in the middle and older age groups, and presumably the majority of these women must earn their own livings. In many cases they will realize that the chances of marriage are comparatively small, which may increase their incentives to make personal business successes. A ten per cent surplus of women should increase their chances of attaining business, professional or political prestige. The present tendency for women to enter more fields of activity as permanent careers should be accentuated in the future.

Marital Status

Many people have speculated that with the declining functions of the family and with the delay in marriage because of the necessity of more intensive education that the proportion of the married would tend to decrease. As with many other good speculations the only fault with this one is that it is not true. Every census has shown an increasing percentage of the population married. In fact the proportion has increased in every age group, with the one exception of young people between 1920 and 1930,

whether this particular decline is permanently significant is uncertain. For all men over fifteen, the 53.9% who were married in 1890 became 60.0% by 1930, the parallel figures for women were 56.8% and 61.1%. The proportion of widows and widowers has remained about the same, with of course the widows in a majority because of the higher male death rate. The percentage of the divorced has increased, but the last figures show only slightly over 1% of men and women over fifteen years of age have been divorced.

The increase of the proportion of the married has apparently been due mainly to two factors. The first is the relaxation of parental control. The old-fashioned father not only had control of his minor children legally, but exercised that control in fact. Sons worked for their fathers until they became of age, and then were free to marry and establish families of their own. The second factor has been the growth of mechanized industry. In the old days, not only did a minor child work until he attained his majority, but any trade required a considerable period of apprenticeship—up to ten years; even then many a young man had to work some years longer before he was sufficiently well established to afford a wife. Within recent years a young man need only fulfil the local educational requirements, and then if he is sufficiently lucky to find a job may earn almost immediately as much pay as his father who has worked for twenty years, and therefore can think at once of marriage. Particularly is early marriage possible when the young bride continues to hold her job after marriage. Even without a job the young man is no worse off married than single, and sometimes is able to get governmental relief that was not available before marriage.

The general trend of the times is illustrated by the fact that the greater increase of the marriage rate has come in the city and not in the country. The city increase exists in spite of the fact that a larger percentage of rural than urban women are married. The explanation of the higher marriage rate for country girls is not entirely that wives are more useful on the farm than in the city, but rather that many young and ambitious country girls go to the city to seek fame and fortune—possibly because they see potential movie or modeling careers, but equally possibly because they see no chance of marrying at home. This trend has created a serious problem for the cities, since a surplus of poor and attractive girls presents difficulties as well as pleasures.

The increase of the proportion of the married may well be considered a testimonial to the attractiveness of Hymen in a period when the functions of the family have declined to little more than the affectional. Marriage has never seemed more attractive than it does today, with slight declines in the marriage rate in depression years being compensated by rises in the good years. The main question is whether this popularity of marriage is not due in part to the increasing number of people who do

not consider marriage as necessarily a permanent bond and hence to be undertaken with less consideration than was formerly the case. Particularly is this attitude possible with a knowledge of contraceptives and with ease of divorce. On the other hand there is no good evidence that people enter marriage more lightly now than when the bonds were tighter. Romantic love has as great a grip on youth as ever in the past, and the bride and bridegroom expect thoroughly "to live happily ever after." The increasing proportion of the married undoubtedly indicates improved social and economic conditions rather than a relaxation of marriage ideals.

Unless conditions change markedly the future should see practically every adult married at some time in his life. The soured spinster and the old-maidish bachelor should be disappearing phenomena. If the proposition is true that man and woman are happiest living together and not apart, then the future of the United States assumes a slightly rosy glow.

CHAPTER 42

PEOPLE ARE NOT ALL BLOND

The American population is one of the world's greatest mixtures of people drawn from the ends of the earth. The United States has been often called a melting pot, but might better be likened to the housewife's soup kettle, in which every available vegetable has been placed. While the industrious wife is hoping for a rich and palatable vegetable soup, the husband sometimes fears for a particularly noxious type of hash, with traces of ptomaine poisoning. Even the poorest cook recognizes that the final dish will not be good unless the various ingredients are right and unless they are mixed in the proper proportions.

The American mixture includes representatives of almost every known race and culture. The original red stock was overwhelmed by the white, which in turn forced the arrival of the black, and attracted the brown and yellow. As to the whites themselves, they are highly various English, German, Russian, Croat, Magyar, Irish and every other known group has contributed anything from a main ingredient to a dash of spice.

The results of this grand combination of peoples depend in part on the character of the cultures that are represented and in part on conditions appearing in the United States, but the end product will reflect largely the innate capacity of the peoples who have come. A varied immigration produces immediate problems of the adjustment of various types and heights of culture, but in the long run these difficulties will disappear and then the basic values of the stock will appear. For example the Patrick Murphy arriving in 1840 might have been uneducated, boorish and altogether unattractive, but at the same time he might have been potentially a valuable addition to American population; on the other hand he might have produced stupid and undesirable children and have represented a net deficit to the country of his adoption. This chapter deals with the one characteristic of race, with an attempt to see the meaning of the term and the relative value of our various racial groups.

The Concept of Race

Theories of race as an important element in the consideration of the quality of population are comparatively modern in their wide appeal. Possibly because of the recentness of the interest there is no unanimity on the part of the self-confessed experts on the subject. In fact they spend a good share of their time calling each other harsh names and often laps-

ing into incoherent mutterings. The lack of agreement has not prevented the acceptance of programs based on racial theory. Notably Germany, but also other countries, has enforced such a theory rigorously. Even the United States has not been free from the racial discussion even though it becomes rather dangerous considering the diversity of American population. Immediately coming to mind are the Ku Klux Klan, the immigration restrictions of the early 1920s and the recent Fascist groups, but other illustrations are easy to find.

But what do we mean when we speak of a "race"? At first glance the definition of a race would seem a comparatively easy task. Certain groups of people resemble each other more than they do their neighbors and hence a classification of races would seem only a matter of stating these differences concretely. In fact, however, such a classification is very difficult to make, and the final result is frequently accepted by no one except its author. Students of the subject have found as few as three races in the world and as many as 150, and this in spite of the fact that there is fairly general agreement on the bases of classification. A race must be described as possessing certain physical traits, as a particular color of skin, texture of the hair, color of eyes, height, cephalic index (the relation of the length to the breadth of the head) Such characteristics can presumably be measured and tabulated, and consequently people divided into at least rough groupings.

The simplest racial division into races would seem to be on the basis of color of the skin, but even here there are difficulties. For example, some question arises as to whether the browns and the reds are really independent races or merely offshoots of the other groups. If one accepts the five primary colors, many peoples are hard to classify—as a casual consideration of the various estimates of the racial division of the world will demonstrate; even the racial experts fail to agree as to who belongs in which race. Incidentally they also disagree as to the number of the people of the world, but this conflict can be explained by poor census material.

The truth is that color of the skin is a rather elusive factor in many cases. Everyone except the albino has some pigmentation, and among the people ordinarily classified as white the color actually varies from a bleached blond to a midnight tan—in fact the darkest of the "whites" are distinctly duskie than the lighter of the people usually classified as members of the "black" race. The blacks vary from a light yellowish brown to a deep ebony, while other colors have similar ranges

Then too there is the perpetual problem of trying to classify mixtures of colors. How, for example, does one classify a good share of the population of Mexico, or of Santo Domingo, or of the Near East, to mention but a few examples. The good American from south of the Mason-Dixon line has the conviction that anyone with a perceptible trace of Negro

blood can be classified as a Negro, but the scientist has qualms about such a grouping, while even the southerner finds trouble with a red-black or a brown-yellow or a black-brown-yellow-red mixture. Possibly the situation would have been somewhat clearer if races had been more race-conscious in the past.

One way of attempting to help the process of classification so that all people normally considered black or some other color would be so included in the classification is to add to the color trait other elements such as height and color of the eyes. And then unfortunately the confusion increases with each addition. If we describe the Negro as having curly hair we immediately remember that many other people of various hues also have curly hair. If we stress stature we are faced with the difficulty that Negroes are among the tallest and shortest of human kind. Obviously any physical trait that can be mentioned is widespread and not confined to a particular race. The so-called races overlap tremendously in their physical characteristics.

One way of surmounting the trouble caused by the overlapping of physical traits is to define a single race in terms of a half dozen or more traits. If the list is lengthened sufficiently all outsiders can be eliminated, but then the opposite trouble comes—one even excludes large sections of the race he is trying to define. But here let us add a word of caution. While the races as based on color are difficult to define satisfactorily there are few who deny their existence. Data do not disappear because they are difficult to classify. Whatever the reason for the differences between people most of us recognize that some groups are vastly different from other groups and that they will breed the same general kind of people if left to themselves. The difficulties of classification may well depend either on a common origin for all human stock, on a considerable intermixture between races, and/or the possibilities of variation inherent in any group.

Subdividing the White Race

The variation within any one color has led people to try to subdivide the major groups into smaller segments. Within the white race, for example, a very frequent division has been into Nordics, Alpines and Mediterraneans. Some students, however, make still finer subdivisions, as of Ruthenian, Magyar, Czech, Slovene and the rest. In some cases the concept of race has been confused with that of nationality, so that we get a French or Italian or Polish "race." Even without this confusion, however, there is sufficient trouble since any group, whether large or small, is labeled a race. At the present moment one has but the faintest idea of what a man means when he uses the word "race" until he explains himself further.

Of the three larger white groups the Nordic has received the greatest interest. The Nordics are in general the people of northwest Europe and

are described as tall, blond, long-headed, curly haired and blue eyed. Their enthusiasts have considered them the "great race" which should dominate the inferior peoples—by which has been meant everyone else in the world. The proof of their superiority is often a little sketchy since the great accomplishments of the world have not been monopolized by any people. When confronted with these facts the pro-Nordics fall back on a rather mystical statement that the Nordics are of such fine natures and such high moral standards that they are unfitted to compete in a world dominated by the low cunning and poor ethics of non-Nordics. Presumably the situation would be better if the Nordics dominated the world and made everyone conform to their standards—or possibly eliminated all other racial elements.

The difficulty of a Nordic or any such classification is that a very considerable section of northwestern Europe is inhabited by people whose physical characteristics do not follow any given definition, while there are many people elsewhere who at least look like Nordics. There are a multitude of short Swedes, of brunette Germans, of brown-eyed Dutch, of straight-haired Danes and of other exceptions to whatever description can be given of a Nordic. If such people are Nordics by ancestry alone then the whole basis of racial classification disappears. On the other hand, there are many Italians, French and Spanish who come closer to the Nordic qualities than do some of the Nordics themselves. Is a tall, blond blue eyed Italian a Nordic or not? Possibly the trouble is with the classification, but better means than physical traits seem hard to find and even more difficult to apply.

The difficulty seems to be that the white stock of Europe has long been mongrelized. Nearly every European nation has been overrun with wave after wave of invasion, and in each case the invader has left not only social customs but also some of his blood. The past has not seemed greatly concerned over racial purity. The possibility of producing a pure race that would breed uniformly like fox terriers or Merino sheep seems a rather remote chance unless human beings change a great deal.

While the confusion of races is great in Europe it is much worse in the Americas. No American nation has drawn its population exclusively from any one section of Europe so that confusion has been added to confusion, with the end result of chaos.

Further comment could be made upon the effort to divide the white race into still smaller groups, but seems unnecessary. The smaller the division the more difficult to obtain a definition that does not include either too much or too little.

Importance of Physical Differences

With these difficulties in defining races, the question immediately arises as to whether such a separation would have any value except to give em-

ployment to idle philosophers. The answer depends in large part upon whether physical traits have any relation to the bodily activities, including that of the mind. Possibly certain physical characteristics imply innate differences in ability which would justify giving preference.

Most bodily functions appear to have no correlation with the so-called racial traits—in fact there seems to be no observable differences between races, no matter how the word is defined. The normal temperature of a human being is 98.6 whether he is white or black, a giant or a dwarf, curly or straight haired, blue or brown eyed. Similar statements can be made for the respiration, pulse, sight, hearing, smell and the other functions of the body. Individual variations exist but cannot be correlated in any known way with the traits labeled racial.

A few implications can be drawn from features such as difference in height. Tall people have some advantage in picking fruit or in seeing a parade while in a crowd or in becoming heavyweight boxers, while short people may have some advantage in picking vegetables or in sleeping in a Pullman berth. Blondes are more subject to sunburn than are brunettes. Curly headed people save money in beauty treatments. A list of such advantages and disadvantages might be compiled, but would hardly repay the trouble.

The crux of the whole matter of racial differences lies in the question as to whether mental ability varies from race to race, and here the situation is almost completely chaotic. Racial intelligence is a mystery since we understand neither of the terms very well. The difficulties of defining a race we have already noted, and the term "intelligence" is but little easier. One can define it as the innate ability to learn, but can the ability to learn be distinguished from the learning itself? Consider the efforts to compare the innate intelligence of an illiterate Chinese coolie with that of the president of Harvard. A test must be devised which will not necessitate written language or mathematical symbols, and which will avoid any object or custom which is not equally familiar to both. In addition, such a test must eliminate the advantage of the educated man in the familiarity with intellectual activity. These difficulties may be minimized by obtaining two racial groups that are roughly comparable in background, but as yet no such groups have been found in which all commentators agree that the members have equivalent backgrounds.

If a test could be devised which eliminated all environmental factors, then it should be given to large and equivalent cross sections of each race. Up to date this condition has not been met under proper test conditions. The mental testers are still young at the job and tests which can be given indiscriminately to people of any language and any cultural background have not as yet been perfected. The testers do have some confidence that with enough time and tests they can detect the subnormal mind, but further than that there is doubt.

The comparatively few tests that have even pretended to measure racial differences in the United States have for the most part given the advantage to native-born whites. The largest of them was the test given in the army during the First World War, unfortunately this particular test has been very largely discredited, both as to its contents and as to the methods of its giving. It produced the conclusion that whites were more intelligent than Negroes but also permitted the deduction that northern Negroes were more intelligent than their southern brethren—and in fact that the northern Negro was more intelligent than the southern white. Very few commentators have been willing to accept such conclusions at their face value; rather they insist that such results show that the tests emphasized learning rather than education.

In general, intelligence tests have given their highest ratings to the upper social and economic classes—which incidentally are members of the same group that prepared and gave the test. Possible conclusions are that people receiving over \$2,000 a year deserve their earnings since they are brainier than the lower income groups, that professional men have brighter children than others, that immigrants become more intelligent the longer they live in the United States, that the whites are superior to any other race. Equally possible is the conclusion that the tests are not trustworthy in content and not given to sufficiently large and representative groups. Their main function to date has been to give still another point of argument in the consideration of race.

One positive conclusion seems inescapable from the mental tests, and that is that the racial groups (however defined) have vast differences of mental ability within themselves so that the overlapping between the races is very large—in fact the overlapping is probably more significant than any difference of the averages. Undoubtedly the great bulk of any one race is more intelligent than the lower segment of any other race. Unquestioned also is the generalization that each race contains both very stupid and very brilliant people.

Why Racial Theories Arise

Any general conclusions from the racial discussion would seem to be that although certain human types can be distinguished as quite usual in particular places, that (1) any satisfactory classification of races is difficult if not impossible to obtain; (2) that even if such classification were possible that it would probably not indicate any important difference in physical or mental abilities. The real importance of racial theories, like that of so many philosophic concepts produced by the human brain, is not their comparative truth or falsity but rather the occasion for the development of the idea and the use to which it is put.

Racial ideas have been conceived and developed primarily to buttress the feeling of superiority on the part of the group making them, and to

justify giving an inferior status to other people. The contention has been made that all such theories have been developed because of group economic frictions, but this generalization is probably incomplete, even though it can have a good deal of justification.

The first American racial theories naturally were concerned with the Negro, since here was a group that had been imported by force and which was continued in slavery after that status had been abolished throughout the western world. Some justification seemed to be necessary, particularly to the white southerner, and the easiest justification was to utilize the obvious physical differences between white and black. It was held that the Negro's physique fitted him particularly for hard work in the fields and particularly in a warm climate, since Africa was warm. Furthermore the Negro was held to be lacking in mental power, so that his proper place was unskilled labor in gangs having white supervision.

The apologists for slavery were living in a highly religious age and were being attacked vigorously on the ground that slavery denied the brotherly love concept of the New Testament. They could answer that slavery was common among the Jews during Old Testament days, but this line of argument was not highly impressive as against the teachings of Christ. The much better answer was to insist that the Negro race was an inferior group and not included in the Biblical teachings—in fact that it was scarcely human, but occupied a place midway between man and the lower animals. A great deal of "evidence" was amassed to prove this point, which at least made the slave-holder have an easier conscience.

The only other race with which the young America dealt was the red, and here the situation was quite different. The two races did not live in the same areas and there was no necessity of supporting a particular economic or social status. The Indians only had land which the whites wanted—a very unfortunate situation for the Indians. Racial theories did not develop since there was no particular point in them. A few people speculated that the Indians may have descended from the lost tribes of Israel, but practically no one felt strongly on the subject. Visitors described Indian customs and traits of character—usually erroneously—but practically no one sought to describe the innate characteristics of the reds as a race.

Within more recent years both yellow and brown people have come to the United States, but again the problem has not been pressing for the majority of the American public. While the Pacific Coast has tended to oppose and discriminate against these groups on a racial basis the matter is not national. For most of the United States the "yellow peril" refers to troubles arising on the other side of the Pacific (For a further description of these groups see the next chapter under the heading of "Immigration")

The Negro

The one colored race, then, that has been an outstanding problem of the United States in the past and will undoubtedly continue to vex us in the future, is the black. Whether this problem concerns primarily the innate characteristics of the Negro as a race or the social and economic competition of two identifiable groups may possibly emerge from a description of the situation and progress of the Negro.

Until the present generation the Negro was almost entirely a southern problem, and particularly a southern agricultural problem. A good 90% lived south of the Mason-Dixon line, and at least half of these were engaged in the growing of cotton, ordinarily as sharecroppers, but sometimes as renters, owners or laborers. A South that had been impoverished during the Civil War, that was wedded to an agricultural system in which the single crop of cotton was fast draining the fertility from the thin soil, that was trying feebly to advance a whole race from barbarism to white civilization, was not to be blamed severely if all conditions were not ideal.

While the South struggled to conquer at least the most pressing of her problems the rest of the United States could stand aside, look askance at southern conditions, and make critical and disparaging comments on the discrimination and inhumanity which have so often accompanied the existence of two races side by side, particularly when one of the races has been clearly dominant over the other. Actually the non-southerner was not entirely blameless. While the South feared and discriminated against Negroes as a race it liked and respected many individuals, treating them with a warm sympathy and understanding unknown to the rest of the country. The North on the other hand feared and rejected individual Negroes, of whom it had a few, but at the same time looked with compassion and theoretic liking on the race as a whole—possibly in part because it had almost no contact with the race.

The geographical location of the American Negro was changed markedly with the economic dislocations of the First World War. The boom of war industries mushroomed American business, and factory owners began to search for the same kind of cheap and docile labor that they had formerly been receiving from Europe. Conversely the Negro saw his opportunity to free himself from the serf-like agricultural conditions of the South, and particularly to escape the boll-weevil scourges of 1915 and 1916. Millions followed the lure of high wages to the North. Possibly they were attracted also by the more generous social treatment, but this factor was distinctly secondary.

The movement of the Negro to the North was the equivalent of an earlier movement of the whites from country to city—a comparison which gains force as one realizes that many Negroes moved to the southern

rather than to the northern cities, and that many white southerners also moved to the urban centers of both North and South. The majority of the Negro migrants left farming and went into the northern factories, so that the great influx was to the cities in the industrial belt stretching from Omaha to New York. New York attained the largest Negro population of any city in the world, and Harlem can properly be called the Negro capital of the United States.

Negro migration meant that no longer was this particular race problem the exclusive concern of the South. A considerable share of the country now faced the same kind of situation that the South had experienced for many years. Race riots in Chicago, St. Louis and other northern cities attested to the spread of the Negro, to the increasing friction of the two races in the North, and to the difficulties of racial adjustment. The North's abstract humanitarianism apparently was as difficult to make work satisfactorily as the South's colder blooded realism. In fact the practical treatment of the Negro in the North was very similar to that of the South except in degree. The northern Negro was segregated in the least desirable districts and subjected to the usual discriminations in travel and amusement, even though the extent of these discriminations was not as great as in the South.

The increased spread of the Negro population has been one of the most important forces in convincing the general public that racial relations are a national rather than a regional problem. People are recognizing increasingly that there is no simple formula for solving racial conflicts and that the traditional answer of segregation is by no means sufficient in itself. The stark truth is that employers want Negro labor, politicians want negro votes, and that crime and poverty and disease recognize no human segregation. A real effort must be made to raise the income and living standards of the blacks, and this necessity is apparent both in the North and in the South. The whites must help to provide proper education, sanitation, living quarters, jobs and amusements for the Negroes—for the benefit of the whites. The old argument as to whether the Negro is inherently different from and inferior to the white becomes more and more an academic abstraction to occupy otherwise idle evenings in argument.

A considerable part of the Negro's trouble is economic. Traditionally he has performed the unskilled and poorly paid work of the country. He is often given preference as a sharecropper over the white, but he has seldom attained a managerial position since whites will neither work with him nor under him. Negro leaders have hoped that their race would increasingly become independent farmers, but the progress in this direction has been disappointingly slow. Some slight improvement in the position of the southern Negro agricultural laborer has come with the migrations to the North, since a potential scarcity of labor tends to increase wages and

to improve working conditions. This trend is even more apparent in the growing southern industries that use Negro labor.

In the North the Negro ordinarily holds unskilled industrial jobs. His wages are low and his employment frequently irregular since he is the first to be fired and the last to be hired. He belongs to a union less frequently than does the white, partly because he is poorly paid and unskilled, and partly because of union exclusion. While very few national unions have rules excluding the Negroes the local union may attain this object by local regulations. The trend, however, is all toward admitting Negroes to the unions since Negro non-union competition is more serious than Negro union competition, the moral has been made very plain in the numerous cases that Negroes have been used as strikebreakers. The number of independent Negro farmers and business men is increasing, but still remains small. Professionally trained Negroes must confine their activities to members of their own race, which is a tremendous handicap since this group is composed almost entirely of small income receivers. Negro members of fire departments, of police forces and of the army are not unusual.

Socially the Negro tends to congregate, both North and South, in closely crowded living quarters—not entirely by his own choice. Low wages and congestion produce unsavory living conditions, and explain at least in part the extensive gambling, the numerous clubs and lodges, and Father Divine. They also help to explain the high rate of crime, the prevalence of disease and the frequency of poverty. Quite understandably the Negro crime rate is higher in the crowded slums of the northern cities than in the predominately rural areas of the South. In politics the Negro can vote in the North and is sometimes appointed to minor offices, his vote is often subject to sale as a means of piecing out an inadequate income. In the South the Negro is generally excluded from voting by some legal subterfuge and of course holds no offices. In education the northern Negro is seldom segregated or excluded, although his numbers may be limited in private northern colleges. This comparative equality of treatment does not mean, however, that Negroes are as well educated as whites. Coming mostly from low income groups they normally find it necessary to go to work as soon as the law permits. In the South all Negro schools are separate and are generally poorer than the whites, with inferior equipment and badly paid teachers; some of these teachers are Negro but others are white. Numerous Negro institutions of higher learning, as Hampton, Berea, Fisk, Tuskegee and Howard have done magnificent jobs in the face of almost insuperable difficulties and yet they are hardly noted for their high standards.

As Negroes moved to the North they have tended to be more conscious of themselves as a race, to try harder to understand the better white culture and to make efforts to construct a distinctive civilization of their

own The coal black Negro gained prestige as contrasted with the mulatto, and the traditional claim of the Jamaica Negro to superiority lost force. As long as they were almost exclusively agricultural labor on one-crop southern farms their opportunities for cultural advancement were few, but as they came north and increased in wealth in a region where the barriers to their attainment were not so great they began to develop cultural centers in the larger cities and to produce forceful and dynamic leaders The old Booker T. Washington attitude of accepting gratefully anything offered by the whites and striving only to make the best of freely offered opportunities began to give way to an active seeking and even an outright demand for positive advantages.

Negro racial consciousness has been one of the forces that has spurred the Negro to achievement, until by now many Negroes have achieved fame as athletes, actors, singers and dancers, while the number of doctors, lawyers, business men and other professional people has increased Most people recognize a Paul Robeson, a Marion Anderson, a Bill Robinson, a Joe Louis, while a W. E. B. DuBois, a Claude McKay or a Paul Lawrence Dunbar is not entirely unknown to fame The future remains inscrutable, and yet one may guess that the place of the Negro in American civilization will increase in importance even though his proportion of the total population continues to decline.

Racial Theory and Nationalism

Recent racial theories have tended to emphasize not so much the different colors but the subdivisions of the white race In one sense such theories are by no means new since there is a long if not entirely honorable history of such concepts as they have been used to buttress particular classes or groups Their only originality is that they give the palm of superiority to different groups. Naturally the control of the world has shifted hands from time to time, various groups have found desirable the support of their pretensions either to obtain or create dominance and this support may be obtained in part by developing the conviction that the group is innately superior to other groups.

Examples of racial thinking are not difficult to obtain. During the Middle Ages the nobles felt that they were of different racial stock (German) from the serfs and slaves (Latin, Celtic) and consequently were superior and justified in maintaining their control. English-speaking people have long felt that their Anglo-Saxon ancestry has been the source of a special interest in self-government and in the best systems of law. Of course such traditions are not justified factually. The Middle Ages had no split of the type stated The English-speaking people are only Anglo-Saxon to a minor extent and there is no satisfactory proof that the Anglo-Saxons furnished an unusually good background for law and government. To the outsider there is something faintly humorous in the

modern Italian claiming the virtues of the Roman Empire because of his blood, or the modern Greek feeling a proprietary claim on the glories of ancient Greece

Since racial theories have been used traditionally to support the pretensions and desires of mankind, nothing is more natural than that they should have been used in recent years as one of the supports of nationalism. While the German claims have received the most effective propaganda, others have been in evidence. In general they have held race to be equivalent to nationality, have argued the glory of their racial background, the inherent superiority of the group, and the desirability of adding outlying sections of the "race" to the fatherland. The importance of such claims does not rest primarily on their very questionable truth. What really matters is that people believe in them, obtain an increased sense of their own importance, and feel justified in showing their superiority by force of arms if necessary.

The most widely stated of what may be called the national-racial theories is that of the superiority of the Nordics—sometimes called the Aryan, German or Teutonic. Its content has been stated earlier and the reasons for its acceptance by many people is fairly obvious. What is a trifle curious is that the modern development of this theory stems back to a non-Aryan, the Count de Gobineau, a Frenchman. He published his *Essay on the Inequality of the Human Races* in 1855. His conclusions were not based so much on a study of the fact as on a state of mind; he was a conservative of aristocratic traditions who was living in a republican France and consequently looked with admiration on the backward German states with their autocratic rule and privileged classes. At a later date this political backwardness was not considered so advantageous by the theorists who accepted the general Gobineau position.

Gobineau's most ardent German believer was the musician Richard Wagner, who was ardently anti-Semitic. Wagner's son-in-law, the Englishman Houston S. Chamberlain, ultimately wrote *The Foundations of the Nineteenth Century*, which became a sort of a Bible for the pro-Teutonic racial theorists. Not amazing is the fact that the late German Kaiser and the present Fuehrer Adolf Hitler were both impressed and influenced by the Wagner-Chamberlain beliefs. Slightly ironic, however, is the fact that the basis of German claims of racial superiority was laid primarily by two books, one written by a Frenchman and the other by an Englishman.

Efforts have been made to sell the Nordic theory to the United States, in spite of the very obvious fact that there are but few Americans who can qualify as Nordics. No great harm has been done to date. Americans have long had the comfortable feeling that they were superior to the rest of the world—a feeling held so firmly that it has needed but little racial support. Attempts to eliminate labor or other competition by discriminating against "wops," "dagoes," "kikes" and other alleged inferior racial

groups have been only sporadic. The Klan of the 1920s had some such connotation in its agitation against "foreigners." The fascist groups of the present time, and particularly those connected with the German Nazis, are violently anti-Jewish, but their number is so small and their estimation so low that there is some question which way their propaganda reacts. One hopes that racial propaganda never becomes widespread in the United States, for its potential harm is almost limitless in the heterogeneous American population.

CHAPTER 43

RESTLESS PEOPLE

Population is never static. Not only does it increase or decline in total numbers but also it drifts from place to place. From the time of the earliest human records people have been on the move, either temporarily or permanently. The United States has experienced at least its fair share of world population changes. Three great American movements have been particularly outstanding—that of immigrants to the United States, that of easterners moving west, and that of country people moving to the city. Other changes can be noted, but these three dominate, of them, two are practically at an end, but the third remains in full swing.

Immigration

The United States is a nation of immigrants—from the passenger on the *Mayflower* to the latest arrival to set foot on Ellis Island. All told some forty million immigrants have come to the United States since 1820—the first year in which such arrivals were tabulated. Without them America would still be the exclusive property of roaming bands of primitive Indians. We all descend from immigrants of a greater or less degree of antiquity, even though some of us take pride in the relative priority of the arrival of our own forefathers.

The vast majority of the immigrants of any period probably came to the United States for economic reasons—or at least to improve their economic condition as a way of raising their status in society. Now and then a few have run away from political or religious troubles, but the usual migrant has been looking above all for a better job and more income. The United States has beckoned as a land of economic opportunity, and hence the ebb and flow of arrivals has varied with the prosperity of the United States. While the general trend of arrival was upwards until the period of the World War, decided drops occurred during periods of depression. Economic hard times not only increased the difficulty of the prospective migrant in obtaining funds to leave home but also decreased the attractiveness of the United States. On the other hand each succeeding wave of American prosperity drew a larger and larger flood of arrivals, until almost a million a year were coming in the decade before 1915.

During the past generation the immigrant flood has dried to a faint trickle, and this change can be traced almost entirely to three factors,

all American in origin—war, depression and restrictive legislation. The First World War started the change by cutting off some 90% of the arrivals by 1918. At the end of the war a period of increase was turned into a decline by the restrictive act of 1921, then came another rise, followed by a drop after the law of 1924. The depression of 1929 lessened drastically the attractiveness of moving to the United States, and the worst years of the depression actually saw more departures than arrivals. More recently the number of entrants has again increased, but it still remains well under 100,000 a year—without making allowance for departures. The number for 1939 was 83,000, of whom about half were Jewish refugees from Germany and Austria. Unless the future is vastly different from the probabilities, immigration is a thing of the past.

The United States has had a long and honorable tradition as an asylum for the oppressed of other lands, but there has never been a period of national history in which more or less strenuous objections have not been raised to the flood of new arrivals. A century ago it was the "wild" Irish and the "dumb Dutch" who were the recipients of the most vigorous excoriations, but other groups moved into the receiving role as the character of immigration changed. Natives have always objected to a horde of foreigners of different social customs, speech, manners and costume; the new arrivals have always appeared stupid, unprogressive and inclined toward pauperism and criminality. In time these immigrants and their children became in turn the native citizens who looked with disgust on still later arrivals.

Objections to immigration only became sufficiently widespread and vigorous to produce legislative action when the country was reasonably well settled. By the 1880s the end of the frontier was in sight and there can therefore be no surprise that the first selective law was passed in 1882. For the succeeding generation all immigration legislation was of a selective and not restrictive character—that is, to exclude such classes as the mentally or physically incompetent, those with anarchistic or other undesirable views, or those likely to become public charges. More drastic restriction was not acceptable, for while the frontier was closing as an outlet for population, the growing industries of America still demanded more and more of the cheap and docile labor which would make their further expansion most easy.

A second change in the immigration situation during and after the 1880s was a change in the racial character of the arrivals. Whereas the Germans and Irish dominated the lists of arrivals in earlier years, now the men and women from Italy, Austria-Hungary, Russia, Greece and other parts of southwestern Europe took preëminence, with Italians in the lead. The new arrivals received all of the old objections—that they were stupid, uneducated, of different customs, inclined to poverty and criminality and all the other social sins—but also new objections that

grew out of the increased emphasis being given to nationality. Viewers-with-alarm pointed out that the new entrants were Slavic or Mediterranean as compared with the old Nordic types. They painted in glowing detail the virtues of the tall, blond, long-headed, blue-eyed Nordic and saw him being submerged in the rising flood of the short and swarthy Mediterraneans or round-headed and slightly oriental Slavs.

Other racial problems have been raised with the arrival of various colored people, and particularly the yellow. The Chinese entered in large numbers during and after the 1850s, landing almost entirely on the Pacific Coast. The total number of arrivals has been something under 400,000, but the high proportion of men and the consequent low birth rate, together with the return of a considerable number to China, has caused the group to decline. The census of 1930 showed only 75,000. The Chinese are primarily an urban people, as illustrated in the Chinatowns of such cities as San Francisco and New York. The stream of arrivals has been stopped by the act of 1882 and subsequent legislation, so that the Chinese problem should become less important in the future. One may at least hope that the discrimination and race riots of the last quarter of the nineteenth century will not be repeated.

The Japanese did not arrive in considerable numbers until after 1890, largely because emigration from Japan was prohibited by the imperial government. All told something less than 300,000 have come to the United States, and the census of 1930 showed less than half that number here now. The Japanese differ from the Chinese in several important respects. The birth rate is higher—in fact the Japanese are at the moment growing faster than the native-born whites. The Japanese are also largely rural as compared to the urban Chinese. They have concentrated on the Pacific Coast, and have taken up much California land, where they dominate such crops as berries, onions, asparagus and other vegetables. As might be expected they tend to segregate and to continue their own customs—in fact they are highly unassimilable.

California has long objected to the Japanese and has tried to make their place as uncomfortable as possible, particularly by passing discriminatory educational laws and by trying to prevent Japanese land holding; the latter effort has not been entirely successful because of the possibility of legal evasions. Discriminatory California legislation forced the hand of the American government and the result was the Gentlemen's Agreement of 1907 by which Japan agreed to stop the migration. Recent legislation has excluded the Japanese—a bitter blow to Japanese pride, but effective in limiting and localizing the Japanese problem. Probably the difficulties will never be greater than at present, and probably also they will remain almost entirely a California concern.

The latest Pacific Coast racial problem has been that of the Filipinos, who began to arrive in considerable numbers after 1920. They have been

employed largely in unskilled agricultural jobs such as fruit and berry picking, but can also be found in some unskilled urban occupations. In 1930 they numbered 45,000, of whom two-thirds were in California. Strenuous native objections to this new type of labor have followed traditional patterns, including race riots. Protests have if anything been more vigorous than those relating to past groups because the outnumbering of Filipino women by men by a proportion of fifteen to one has led to a large number of Filipino-native marriages or illicit relations; the reverse of the shield is that the small proportion of Filipino women makes the entire group a disappearing one. Normally the Filipinos would have been excluded along with the Chinese and Japanese, but this solution has been impossible as long as the Philippines are a possession of the United States. Under the insular cases the Filipinos were not accepted as citizens but were labeled as nationals and consequently were not affected by immigration laws. With the independence act of 1934 the Philippines were started on their way toward independence, and presumably Filipino migration to the United States will come to an end within the next few years.

Mexican migration has also created difficulties, and again complicated to some degree by racial considerations, since many Mexicans represent an Indian-white mixture. Mexican migration did not become important until after 1900, and attained large proportions only after the general act of 1921 severely limited European migration and caused employers to look south for a cheap labor supply. The census of 1930 showed almost a million and a half Mexicans, concentrated almost entirely in the Southwest, with Los Angeles having the second largest Mexican population of any city in the world. As with the Filipinos, Mexicans have been used largely for unskilled labor, including the harvesting of fruits and vegetables. Their working and living conditions have been particularly bad, while their contributions to poverty, insanity and delinquency have been excessive. While Mexicans do not come under the quota restrictions of our general immigration legislation, various general restrictions, and particularly that against the admission of indigents, have been applied with increasing severity since the beginning of the recent depression. Within the past few years many more Mexicans have been returning to Mexico than have been entering the United States.

These various racial groups furnished part of the reason for a tightening of immigration legislation. After 1900 there was a growing impression that America was sufficiently occupied and needed no further population from the outside, and particularly from the south and east of Europe. Organized labor was particularly vocal in its objections to a large flow of immigrants who were hard to unionize and who thus presumably depressed the conditions and wages of American workers. The result was the passage of the literacy act of 1917—theoretically to exclude another

class of undesirables, but actually to lessen the total number of arrivals. Even ardent supporters found difficulty in maintaining that illiteracy indicated an inferior and undesirable person.

The act of 1917 was not very effective and so a new principle was devised and applied in the acts of 1921 and 1924. Altogether three variations of the new plan were enacted—the first in the act of 1921, then a temporary one in the act of 1924 and then the final one stated in the latter law. The last of these, and the one now in operation, provides that a total of 150,000 immigrants can be admitted in any one year, and that they shall be admitted from the various countries according to the proportionate number of that nationality in the total American population. Potential admissions actually run a little over the 150,000 because the minimum quota is 100, but in practice the quota limits have never been reached in the past decade. Two important modifications of the national origin system should be noted. Most of Asia, including China and Japan, is in the "Asiatic barred zone," from which only minimum quotas are permitted. On the other hand the quota system does not apply to North and South America—as a friendly gesture to that part of the world. Even here, however, there has been considerable limitation by means of the stricter executive application of the selective provisions of the law.

The future of the immigration policy of the United States seems in some ways fairly predictable. Restrictive legislation will undoubtedly continue and may become more severe. The national origins provision will undoubtedly continue in spite of the increasing difficulty of determining quotas as the boundaries of the world change. The strongest present movement to change the immigration system is to increase the number of deportations, of which there were 18,000 in 1939. Most Americans seem convinced that the majority of radical movements, whether fascist or communist, can be laid at the door of aliens. The basis for this belief is probably that radical groups are recruited largely from the poorer parts of the cities and contain more aliens than the average for the United States, particularly since newer immigrants are often worse off than older inhabitants. Since every such party has a large number of natives, deportation seems an unlikely cure for radicalism, even if everyone wants to cure it. One can not deport Norman Thomas or Earl Browder.

The other main aim in the suggestion of more deportations is the reduction of unemployment either by removing the unemployed or by vacating jobs that could then be filled by natives. No question is ever raised as to whether the men and women to be deported are desirable or undesirable people. The main trouble with this proposal is that it would be ineffective. Deportable aliens number no more than half of the unemployed. More important, aliens not only hold jobs or receive relief, but also consume goods whether or not they are employed. Removing them would not only free their jobs for others, but would decrease the

total number of people to be fed, housed and clothed, with the result that an additional number of native Americans would lose their jobs. Moving people from place to place is but seldom a cure for economic ills.

The effects of immigration are not entirely clear. Even in the obvious matter of the degree to which immigrants have increased the total number of Americans there is no complete agreement. One school of thought goes to the extreme of holding that the entire immigration of the past century produced no net increase in the American population. The contention is made that the larger the influx of immigrants the smaller the native birth rate. This view is altogether too extreme, even though everyone agrees that immigration has discouraged the native birth rate. If the birth rate of 1800 had been maintained unimpaired we would still have fewer people than we now have, and this maintenance is improbable.

Foreign-born birth and death rates are both higher than those of the native-born, but the foreign born are increasing somewhat the more rapidly, which produces for many the fear that our traditional American beliefs, traditions and even appearance are on the way to oblivion. This position exaggerates the truth. Recent immigrants will undoubtedly leave an impression upon us, but to a considerable extent they will adopt the clothes, speech and manners of the natives. Our worst fears may be alleviated by the fact that the birth rate of the foreign born is dropping twice as fast as that of the native born, so that in time the reproduction rates of the two groups will probably coincide.

The great majority of immigrants have always remained near their ports of debarkation. They have generally congregated in the cities even though they were ordinarily farmers at home. Certain groups such as the Germans and Scandinavians went west and took up land, but such cases have been unusual, presumably because land was not easy for poor people to acquire, and an industrial job was more immediately appealing. Eighty per cent of the foreign born live east of the Mississippi and north of the Ohio—in fact they constitute a majority in this area. Few have gone into the South because of the competition of Negro labor, Kentucky has the highest proportion of native born—86.8%—of any state in the union.

Since immigrants lack reserve funds they take the first jobs available and are thus fine material for the employer who wants to pay low wages and avoid unionization. In fact such employers have made definite efforts to attract immigrants. The foreigners have come from lower standard countries and hence American wages seem princely—at least until the man discovers how little they will buy. His unfamiliarity with industrial conditions and with the American language and customs makes him look askance at unions—particularly since they ask for a part of his altogether too meager salary. The consequence is of course labor exploitation of the more blatant sort.

Cheap and docile immigrant labor needs periodic replacement, for

immigrants in time learn American ways and object strenuously to poor labor conditions. The outlet for the employer is to hire a new supply of labor. Historically the Scotch and English have been replaced by the Germans and Irish and they in turn have been replaced by Italians, Armenians or other southern Europeans. Such a progression can be found in such industries as New England textiles, New York garment factories, and Pennsylvania coal mines. French Canadians have also crossed the border in considerable numbers, coming particularly to northern New England. Immigrant labor has been favored by the continual introduction of new machinery that has permitted less skilled labor. Little wonder that organized labor has opposed immigration.

Immigration has had various economic effects on the native born. To some extent immigration has closed the door for natives in some industrial occupations. Immigration increased along with the factory system, which meant that many industries never employed much native labor; the native stayed in farming and possibly went West with the frontier. In some cases, however, natives were displaced. The displaced worker might continue his same occupation, but farther west, as with coal miners. He might enter a newer industry as oil, automobiles, radio, airplanes. He might be forced up the social and economic scale into a managerial position. While a certain amount of hardship was entailed in these changes there is little evidence that in the long run the native was not as well or better off than before the coming of the immigrant. Since immigration has always declined in periods of depression it has not increased the unemployment of any one period notably.

Non-economic effects of immigration have been many. Politically the immigrant has been easy to manipulate since he has been highly responsive to the ingratiating manners of the politician; a man in a new country propitiates the powers that be. He has tended to help the local political machine maintain control. Most active politically have been the Irish, who at one time were the particular bane of all believers in good government.

Religiously the immigrant tends to establish and worship at churches of his own, since he is frequently unfamiliar with English and feels more at home with his friends. The proportion of Catholics has increased as southern Europeans have replaced northern.

Immigrants have tended to congregate into communities of their own—either as a section of a large city or as a small independent town, as in the mining country. The reasons for this tendency are obvious. Since the immigrant is a low income receiver and since he has no background for the understanding of urban sanitation his living conditions are frequently bad. Foreign quarters tend to be dirty, congested and smelly.

Low income and poor living conditions would seem to promote crime, but curiously enough the immigrant is more law-abiding than the native.

While certain alien nationalities have high crime rates, one must remember that age distributions are abnormal. When the same age groups are compared the native can show the more crime. Presumably the foreigner generally respects the laws of the land of his choice.

Bad living conditions and poor pay find their results in a high rate of delinquency for the children of the foreign born, but even here certain explanatory factors should be noted. Immigrant children live largely in the cities where the crime rate is highest, and they tend to be brought into court more frequently than natives. Little Joe Capistrone has a much better chance of being brought before the judge for swiping an apple from the corner grocer than does J. Harrison Smyth 3rd from the suburb of Swankwood-on-the-Swampcott. Even allowing for such inequalities, however, the immigrant child has a difficult problem. Not only does he suffer from poor living conditions, but also he often is in the center of a cultural conflict as the American customs he absorbs at school and in play clash with the traditional beliefs of his parents. The greatest immigrant problem may well be the second and third generations.

The foreign born provide more than their fair share of insane and paupers receiving institutional treatment. The reason for an excess of insane is problematical, but may be related to the efforts of simple agricultural people to adjust themselves to a high speed and complex industrial civilization. Feeble-mindedness is of course small among the immigrants because of selective legislation. The figures on paupers in institutions are not particularly helpful since the poverty-stricken native is much more likely to be aided by relatives or friends or to be given some form of governmental poor relief which does not include institutional treatment. For both insanity and pauperism some adjustment should be made in the figures to allow for the higher average age of the foreign born.

The future of the American "melting pot" is still open to argument. In some ways the progress of Americanization has been quite rapid. Universal school requirements plus adult education are fast producing an outward uniformity among Americans. And yet certain national and racial peculiarities have lingered in an unexpected fashion, as with the "Pennsylvania Dutch," who have obvious differences after 200 years in America. Inter-marriage of the various national groups increases with each new American-born generation, so that with the exception of such vastly different races as the Negro there will undoubtedly be a fairly complete intermixture in the course of time. Optimists expect this intermixture to add the best traits of all races to American life, while pessimists expect the worst. At any rate there is at present no scientific justification of the belief that a mongrel stock is necessarily bad.

Westward Migration

The second important movement of American population was the trek from East to West. For over two hundred years Americans lived on the edge of a wilderness with each generation sending its youth to start life anew on the virgin lands of the wilderness. While this movement is no longer a living phenomenon its effects remain with us.

The prime importance of the frontier was in its slowing of the industrialization of the United States. American factories were in existence almost as early as those of England, but did not increase with any rapidity until after the Civil War. This slowness was primarily the result of millions of acres of cheap western land which attracted the farmers' sons from the young factories to which otherwise they might have gone. The United States was a nation of farmers long after England had been thoroughly industrialized.

Not only did the United States remain a land of farmers, but these farmers remained roughly on a plane of equality. Prodigal amounts of western land kept down the prices of eastern land and farm products so that an eastern farmer remained but little more prosperous than a western farmer. The few fortunes were the possession of the commercial nabobs or of the handful of rich southern planters. Since the vast majority of the people were farmers, the divisions between city and country, between rich and poor, were not striking.

The concomitant of economic equality in a society without traditional nobility was a rough and practical democracy. But few leisured and cultured families broke the uniform pattern of a hard-working agricultural society. Ideas of freedom and equality were highly appropriate and brought such democratic drives as those of the times of Jefferson and Jackson. Universal manhood suffrage and free public education were frontier products in the sense that it was the frontier that kept Americans roughly similar.

The westward movement, while it did not attract the successful and rich from the East, did draw the more ambitious and energetic. Westerners have ever since contended that the able and intelligent of the East went West and left but the dregs of society, certainly in particular regions the draining of the ambitious for generation after generation has left a stagnant remainder. On the other hand easterners have claimed that the West received largely the misfits, the discontented, the psychopathic, the criminal—the same contention that various Europeans have advanced concerning the entire population of the United States. The answer is of course that even if the generalization is true that no hereditary defects are involved and that under better conditions of life these people and their children have become admirable citizens. In fact, both sides of the argument have been exaggerated unduly.

In one sense the frontier offered a "safety valve" for the discontented who might otherwise have loosed their steam in the form of revolutionary activities. Not that the discontented went West when depression gripped the East, for such was not the case. And not that unhappy factory employees migrated to Kansas or Nebraska farms, for they did not. But rather that the frontier was important in preserving a simple, self-sufficient agricultural life in America and thus made the bad effects of industrial concentration slower in arriving. A sparsely settled agricultural nation experiences depressions less intensely and lacks the concentration of population in which revolutionary thought flourishes.

The slowness of industrialization meant that when it arrived the United States could install the latest industrial techniques with the least possible social waste. American world competition appeared almost overnight, and with it the labor movement made its belated appearance. Social reforms have naturally lagged behind England in many instances, and many people have hoped that they would never be transferred to our shores. Among other transfers from Europe has been the increasing stratification of American society. The traditional boast that any boy has an equal chance of becoming President of the United States—or even president of General Electric—seems to be losing its force.

The westward movement was basically a searching for economic opportunity, which carried with it social power and prestige. At no time, however, was all opportunity centered in the West. Even when the frontier was in full swing many westerners were returning East for education or for business opportunities or to retire. As the country became further settled the ambitious boy saw still further opportunities in the growing cities, both East and West. The growth of the city was contemporaneous with the expansion of the frontier.

Moving to Town

The movement of American population from farm to city has existed throughout the period of census enumeration. Only 33% of our population lived in towns of 8,000 or more in 1790, while the comparable figure for 1930 was 49.1%, with the majority of the change coming after the Civil War. There is no long time series of figures on the number of people actually living on farms, but we do know that between 1910 and 1930 the farm population declined from 32,000,000 to 27,000,000 while the total population grew from 92,000,000 to 123,000,000.

The movement between farm and city is not entirely one way. The figures for the '20s show about two million a year leaving the farm for town and about half that number going the other way. The movement back to the farm increased during the depression years, particularly by people going into the poorer agricultural regions to do subsistence farming, so that there were years in which the majority of the movement was toward

the country. The back to the farm movement is apparently composed partly of farmers who have tried their fortunes unsuccessfully in the city, partly of city girls who marry farmers, and partly of city workers who prefer commuting to living in the city.

The foregoing figures sound contradictory since the annual net movement from farm to city is about a million a year, and yet the total loss of farm population in twenty years is under five million. The explanation lies in the high rural birth rate and low death rate. Whereas the city does not even reproduce itself the country more than supplies the deficit.

The result of this movement of population has been to make the United States primarily urban. In 1930 there was a total of 96 metropolitan districts with a population of 55,000,000—practically half of the United States. At least half of the United States lives within fifty miles of a city of 100,000 or more, while over 80% lives within an hour by car of a city of 25,000 or more. Furthermore the recent tendency has been for small cities to lose population to the larger ones, and for the great population centers to subdivide in smaller sub-centers and suburbs.

The reasons for the movement from farm to city include both factors that push the person off the farm and attractions that draw him to the city. The mechanization of the farm has permitted increased production with decreased man power, and since alternate rural occupations are scarce the surplus gravitates toward the city, where at least poor relief is easier to obtain. The displaced labor is only to a small degree the hired hands. The greater share is the farm sons and daughters who are no longer needed and whose number is swollen by the high rural birth rate.

The other side of the story is the positive lure of the city. The economic possibilities that have produced the ostentatious living of the city induce farm-born doctors to try city specialization, drug store clerks to enter chain employ, and handy men to enter machine shops. Important also is the attraction of superior educational and recreational facilities. The glitter of Broadway may appeal overwhelmingly to the John Smith of Mud Center, who is accustomed to a deserted town by 9:30 and whose greatest devilment is playing pool until 11 00.

The movement of the young man or woman from the farm or small town to the city represents basically a choice of occupations. Where the boy or girl has plenty to do at home, a measure of responsibility and hopes for the future, he or she is unlikely to leave. But where there is little chance of success, where family life is disturbed, where there is nothing but hard work, the appeal of the city increases. Not unrecognized is the fact that the greatest economic, political or social rewards seldom go to farmers.

Migrants to the city are generally young—seldom over thirty—and the majority are girls, who apparently find even less opportunity on the farm than do the boys. The girls tend to go to the city somewhat younger than

do the boys, and a portion later return as farmers' wives. The type of person most likely to migrate is hard to picture, since there is no clear correlation of economic, social and geographical considerations—in fact the surprising statement is made that under normal conditions there is more migration from good farming areas than from poor. Probably leaving the farm reflects a particular psychological constitution—restlessness, dissatisfaction and energy, combined with unsatisfactory home conditions—that is, a home in which the boy or girl has no responsibility, no voice in the family counsels, little chance to attend movies or dances.

Normally one would expect this movement from farm to city to continue into the future, but at the moment there seem to be some straws the other way. The city exhibits some signs that it may not continue to grow indefinitely, while the farm is becoming more attractive. The day may come when the historical trend is reversed.

The modern city has mainly been the result of the steam engine. Large factories are more efficient than small plants when steam is used. Steam locomotives gravitate toward the cities. Distribution facilities inevitably follow suit. This trend occurs in spite of certain obvious disadvantages. Land costs rise, increasing overhead expenses. Congested transportation agencies slow movement and increase costs, to say nothing of the resulting human sorrows of long daily subway rides, packing into elevators and waiting in line. Services such as water, gas, electricity and garbage disposal become more difficult and expensive. High land values mean high living costs, which in turn mean congested and unhealthy slums. Fire and police protection increase in complexity, with criminals tending to gravitate toward the cities. The efficiency of the worker is lowered to a marked degree by the strain of city life.

The economic disadvantages of the city are supplemented by physical and social disadvantages, for most people operate somewhat unhappily under urban conditions. The lack of fresh air and outdoor exercise is obvious. The housewife does not know her neighbor and can hardly gossip over the fence or hold impromptu teas. Many customary American occupations and recreations become at least exceedingly difficult in the city. Kindliness and neighborliness lose force, while tolerance assumes the meaning of a complete indifference, which is probably worse than the snoopiness and gossip of the small town spinster.

While the basic reason for the growth of the city has been economic other attractive features have been added, and these new features are of increasing importance. As compared to either the country or the small town the large city has the better school system, the more extensive museums and art galleries, the superior athletic teams, the most impressive movie palaces and the bulk of the legitimate theater. It also contains the luxurious hotels, the swanky restaurants and night clubs and the most impressive libraries.

The possibility of the end of the growth of the large city rests largely on a change in forms of power with the increasing use of electricity, fuel oil and gasoline. Electric power can be transported cheaply for long distances and can then be subdivided into any desired unit, while oil and gasoline are only slightly less versatile. Factories need no longer be in the large cities because of power requirements, but only for distribution facilities and labor supply and even here improved roads and the gasoline engine have decreased the necessity for city congestion. A movement seems on foot to move industries into the cheaper and more efficient suburban or rural areas, and this movement has produced the satellite cities that cluster around every metropolis. A man may thus technically be a resident of New York or Chicago or some other large city but may seldom visit the heart of the city, his work, his social engagements, his shopping, his recreation are all in the suburbs. The guess is now being made that the greatest growth of the next generation will come to the medium sized city and not to the metropolis. Statistically this trend will be hard to show, since many of the larger cities will enlarge their limits to absorb the new and growing communities. For example, a statistical survey of Los Angeles hardly represents fairly the fact that most residents really do not live in the city at all, but rather in one of the subsidiary communities included within the city limits. Similar statements can be made about other large cities.

Along with the decrease of the economic necessity of the large city goes an increasing attractiveness of the small town and farm. Fast disappearing is the day in which the farmer might be isolated from the rest of the world for weeks at a time. Good roads and snow removal make easy transportation a year-around phenomenon. Radio, the newspaper and daily mail service keep the farmer in immediate and constant touch with the rest of the world. Movies arrive only slightly later than to the cities, while country and city styles in clothes are practically identical. One finds increasing difficulty in distinguishing the farm boy and girl from their city cousins, and the day may soon come when there is no distinction. Rural schools are improving, with the consolidated school fast becoming universal, art and science exhibitions are being transported more frequently; libraries are improving and developing an interchange system—in fact the use of microfilm should make universally adequate library facilities just around the corner.

The end of the growth of the large city is by no means a fact at present. At most it is but a possibility for the future. Even if it should occur it will not come tomorrow or the day after. Its possibility, however, can be viewed with equanimity if not with positive pleasure.

PART XI

The Family

CHAPTER 44

THE FAMILY AS A SOCIAL INSTITUTION

The Social Setting

The family is the institution which forms the basis of every society on the face of the earth. With certain rare exceptions, every man and woman is a member of at least one family. The majority of persons are members of two families, the one in which they are born and the one which they enter in marriage. As children or parents, most persons carry on their daily activities in direct or indirect contact with a family group. The influence of these family relationships upon the individual during his formative years is so great that he can never completely emancipate himself in later life, no matter how hard he may try. His personality, his outlook on life, his standards of values are all brought about in some measure by his association with this primary social institution. The family is basic to the social formation of the individual. It is equally basic to the formation and stability of any society, which is composed of millions of social individuals.

The family is in a unique position with regard to the other social institutions. The family serves as a focal point for all of the institutions at work in a particular society. Individuals go out from the family circle to play their part in the school, the church, the state, and the various business institutions. These individuals naturally do not sever their social ties with the family when they assume more responsible roles in other institutions. They bring back to the family the values, the attitudes, the skills, and the techniques which they have acquired through their participation in the activities of other institutions. They remain family members at the same time that they are students, churchgoers, business men, and voters. The family is influenced by these institutions even as it first influences the boys and girls who are the future members of these institutions. The family is an integral part of the society in which its members function. In order to understand any society, it is necessary to understand the family patterns which prevail there, just as it is necessary to understand the society in order to understand its constituent families.

The family thus both reflects and is reflected by the institutions among which it operates. We may consider the basic pattern of this institutional grouping briefly at this time.

The family is dependent upon the *economic institutions* of any society

through the wage earners whose efforts sustain it. The importance of this relationship is particularly evident in our pecuniary and individualistic society where every man must support his own family if he can possibly do so. Millions of wage earners have been drawn into the large cities by the concentration of manufacturing and distributing organizations in the large urban areas. These economic changes have been reflected upon the form and function of the family. In the cramped city apartments, space is at a premium. The size of the family quarters has shrunk from the days of the old rambling farmhouse with room enough for everyone. Grandmother and grandfather are in the way in these small apartments, and some arrangement must be made for them outside of the home. The intimate family group is smaller than it was in pioneer days. Children are no longer economic assets to many millions of families which have left the farm forever. There are no chores for the boys and girls to do in the city apartment and every new mouth to feed means considerable additional expense. The family has become completely dependent upon the wage earner and the loss of his job is the most serious calamity which can befall it. The entire orientation of the family has changed from the former self-sufficiency of the rural life to a dependence upon a daily or weekly wage. In this and many other ways the family has undergone drastic modifications in the face of changing economic institutions and ways of life.

The institutions of formal and informal *education* exert an important influence upon the family in any society. In an earlier day, the family provided almost the entire schooling which the child received. The modern urban family has largely delegated this function to the school, where the child is taught many of the intangible standards and values which were formerly given him by the family. The school also imparts many of the skills and techniques which are necessary to the child's adjustment to the complex society in which he lives. Many of these insights which he has learned in school will be brought to bear upon his attitude toward the family. The modern child is no longer so completely dependent upon parental abilities and patience as he was in the days when Abraham Lincoln learned to read and write at his mother's knee. The United States has the most elaborate system of formal education that the world has ever seen. The billions of dollars that are spent annually on this tremendous institutional structure will in the long run have a far-reaching influence on the relationships of the family.

The family has traditionally stood in a close and intimate relationship to the *church*, no matter what form that institution has taken. This relationship was particularly marked in the early history of this country before the growth of the large city. In these pioneer days, the family actively supplemented the religious activities of the church by prayers and devotions in the home. The relationship between the institutions of family and

church under such conditions was extremely close. Each institution reinforced the activities of the other in a reciprocal manner such as is seldom seen in contemporary urban life. In the modern metropolitan setting, the church is definitely at a disadvantage in its competition with other institutions for the allegiance and leisure time of the family. This declining influence of the church is reflected back upon the family in the sense that the individuals begin to take their religious roles less seriously than they formerly did. The urban family is undergoing a definite drift away from the influence of the Protestant churches. The impact of this drift upon the manners, morals, and spiritual values of the family will be far-reaching.

Other institutions in our dynamic society might be considered from the point of view of their influence upon the family. Many of these other institutions will be considered elsewhere in some detail. This brief discussion is intended merely to suggest the intimate connection between the family and the cluster of other institutions in which it operates. Society is a complex and interrelated process and the family is a central and integral part of this process.

The Family as a Social Institution

The family may be defined as a protracted relationship involving parents and children in an accepted social setting. The institutional pattern of the family is a complex web of relationships and group expectations, involving such customs as the rights of parents and children, the duties of each member of the family, and the roles they are expected to play toward one another and toward other persons in the community. The family is an institution which exists for the specific purpose of bearing children, rearing them under socially sanctioned auspices, and educating them in the basic culture of the group.

A definition of the family in institutional terms includes both an individual and a collective aspect. The family of John Jones, for example, is an individual example of the institution of the family. The Jones family acts on the basis of certain folkways, mores, patterns, and symbols which the members have learned from their own parents and from other people. The *institution* of the family is more than the sum of its parts, however, when those parts are an indeterminate number of single families with no connection with one another. Each of these families participates through its members in a common system of social rules and expectations which make up the body of custom about the family in any society. No definition which fails to take into consideration both the individual and the collective aspects of the family pattern can give a complete picture of this human institution. Each family lives in an atmosphere of custom and tradition which links it to every other family in the society, just as each individual lives in a similar social and cultural setting. Neither the family nor the individuals composing it live in a social vacuum.

In the present chapter, we shall consider some of the implications of this institutional pattern of the contemporary family. The family is concerned with the complex processes of bearing and educating children in a dynamic society. Many other human variations on this primary human group of parents and children may be found in our own society, not to mention the various forms which the family may take among primitive peoples. Other groups in our society are sometimes called families, such as the childless family, the companionate family, the widowed family, and the illegitimate family (consisting of the unmarried mother and her illegitimate child). All of these variations on the primary family group will be considered from time to time as the occasion warrants. The primary interest of this discussion, however, lies in the "normal" family group of father, mother, and children. Our attention will be directed to the influence which this group exerts upon the individual, the changes taking place in its solidity and permanence, the disorganization which is becoming increasingly apparent in its structure, and finally to the attempts which are being made to bring about its reorganization on a firmer and more realistic basis.

The family is the focal institution for the combined influence of all the other social institutions. Its concept and its structure, its purpose and its pattern, are important aspects of human living together. The *concept* of the family institution is to provide a socially approved organization for the rearing and education of children. About this concept cluster many of the most stable values in our society. The *structure* of the family institution consists of all the behavior patterns which a given society has evolved for the purpose of carrying out this general concept.

The structure of this institution includes the folkways, the mores, laws, taboos, symbols, and social roles which influence the behavior of the individual in the family. These elements range in importance all the way from such customs as throwing rice at the bride and groom to the prohibitions against adultery or incest. Some of these family conventions have been evolved consciously and rationally in response to particular needs. Many more have sprung from the confused and random attempts of men and women to live in harmony with each other within the bonds of matrimony. The social controls clustered about the family form the most complex code of positive and negative mores in society. The structure of the family institution is exceedingly complex. Its ramifications extend into many other institutional patterns.

The child acquires many of the attitudes and values of the family pattern in the course of his early experience. They are important in molding his growing personality. The structure of the family becomes an integral part of every individual who participates in its activities, whether as child, parent, or both. The child comes to cherish certain objects intimately connected with his early family life, such as his childhood home,

a chair, a picture, or any one of a thousand homely objects with which he has grown up. These objects often have no intrinsic value, but they have become invested with the tender sentiments of childhood and youth. They are important to the individual because they are associated with the period in his life when his behavior is most plastic. Every family has a number of such relics about which cluster all manner of sentiments and traditions. The structure of the family as a collective tradition is composed of just such behavior patterns and traditions and the individual becomes habituated to these elements in the normal process of his growth and development. In this way the family changes and grows along with its individual elements.

The Origins of the Family

The family is one of the oldest institutions in human society. Its ultimate origins are veiled in the mists of an antiquity so remote that it is impossible to pierce it. The only certainty is the fact that the family is one of the oldest—if not the oldest—of all the social institutions which combine to make up our world. Indeed, recent studies of animal behavior among the higher anthropoids and even among lower animal forms suggest that a rudimentary form of family life exists among them. The family may then have existed in elementary form among the subhuman species which antedated *homo sapiens* in the evolutionary development.

The existing knowledge of the forms of the early family is just as fragmentary as that concerning its origins as a social institution. A number of theories have been advanced as to these early forms and the nature of the evolutionary steps which terminated in the patriarchal and monogamous family of today. These theories will be briefly considered and evaluated.

(1) *Patriarchal Family*.—This theory states that the family has always existed in approximately the same patriarchal form as it was found among the ancient Hebrews and Romans. This patriarchal relationship between man and woman was assumed to have existed since the dawn of time. Men were believed to have always been the dominant sex in the marriage relationship and the women the subordinate partners. Descent and inheritance were said to have always been traced through the father. This explanation of the early family was believed by many students in the nineteenth century acting on the dubious assumption that, since the family apparently took the patriarchal form in every civilized society, it must have existed in this same form since its earliest beginnings. This assumption is not widely held today by reputable anthropologists.

(2) *Matriarchal Family*.—According to the theory of the matriarchal evolution of the family, the mother was originally the most important member of the group. She it was who cared for the children and gave them her name and status in the group. The father was a casual member

of this early family, since he did not generally remain with the family after the birth or even after the conception of the child. In these primitive times, the relationship between sexual intercourse and the eventual appearance of children was in all probability not fully understood, as is the case in many contemporary primitive peoples. The mother, not the father, was the parent who fed and protected the children and instructed them in whatever meager cultural heritage the group might have possessed. This form of family was believed to have been dominant for the longest period of human development and was only supplanted by the patriarchal form in comparatively recent times.

Other students have suggested other explanations for the origin and development of the family. These theories are for the most part variations on the basic matriarchal or patriarchal theme. The chief differences between them arise from the ways in which the evolution of the present monogamous form of the family is explained. Some persons maintain that the family evolved after a period of complete sexual promiscuity, followed by another period of what has been called "group marriage," to a final stage of pair marriage such as has existed since historical times. Others maintain that man has always been monogamous, that there was no original period of promiscuity or group marriage and that the male has been the dominant figure in the relationship since the beginning. These persons point to the erotic jealousy of man for his mate and suggest that with such an "instinctive" foundation any form of sexual freedom on a large scale is inconceivable. They also attempt to make out a case for monogamy among the higher anthropoids. The argument in this case is that if the apes are monogamous then man, who has descended from anthropoid stock, must always have been monogamous also.

These explanations of the origins of the family clearly rest upon a series of inspired guesses based upon relatively few scientific facts. These facts are gleaned from such varied sources as contemporary ethnological studies of primitive peoples, archaeological findings of the culture of prehistoric man, and studies of the social behavior of the higher anthropoids. By the very nature of the case, no one of these theories can ever be completely proved or disproved. No single theory is "true" in the sense that it represents the *only* explanation of the origins of this basic social institution. At the present state of knowledge, we can only state these various theories and point out their obvious shortcomings. The complete and definitive story of the family has not yet been written. In all probability, it never will be.

Personality and the Family

Every social institution has developed a number of roles which each member is expected to follow with regard to fellow members and to non-members. These roles are prescribed by the society in which the in-

stitution functions and serve as the principal mechanism by which the institution controls its members and moulds the complex structure of their personalities. The family pattern is composed of a number of such inter-related and reciprocal group expectations by which the conduct of the various members is defined. Each member has a definite part to play in the life of the family group. Neither the individual nor the family invents these roles. They are prescribed by the mores of the group before any of the individuals concerned have been born. The family roles are part of the social heritage which is handed down from generation to generation and which each individual begins to learn even before he is able to think clearly about them.

Each society has its own unique set of mores which make up the role of each member of the family. In our society, for example, we have our own picture of the role which the father should play. First of all, the ideal father should be a good provider in the material sense for his wife and children. Inability to carry out this role satisfactorily constitutes a serious failure in the eyes of the group. Persons outside of the family tend to look down upon a father who does not support his family, no matter whether he is personally at fault or not. This attitude of disappointment with and contempt for the unsuccessful provider is often shared by the wife and children. Even the father may lose confidence in himself as a "good" father if he is unemployed for a long time. He may be bitterly critical of his own inability to fulfill the traditional role of the father in our society. As a result, he may brood upon his own insufficiency even though his unemployment is caused by forces completely outside of his control.

The ideal father furthermore should be faithful to his wife in thought as well as deed. He should be indulgent toward her innocence of the world and should shield her as completely as possible from any contact with harsh realities. He should be kind and gentle to his children without deferring to their every whim. He should be the court of last appeal in matters of family discipline and should temper justice with mercy in these relationships. He should finally be sure to make the necessary arrangements with the insurance companies so that his wife and children will not be destitute after he has gone.

These characteristics of the ideal father role are social and not individual products. They are admittedly ideals which many fathers do not even approximate. Nevertheless, they are important agencies in forming the personality of the father as well as that of his children. These roles constitute the expected thing to do and each father attempts to adapt his behavior to correspond to these expectations. The wife and the children have their own roles which are reciprocally related to those of the father. Each of the many relationships of the family involves a series of attitudes and actions on the part of every person involved. These roles form an integral part of the social atmosphere in which the family functions.

Other cultures have established different sets of roles with different expectations placed upon the individuals in the family group. In certain primitive societies, the role which the father plays in our society is played by the mother's brother. The uncle, not the father, is the head of the family for all practical purposes. The children look to their maternal uncle for companionship and instruction in the mores and behavior patterns of male society, just as in our society the children look to their own blood father for the fulfillment of a similar role. In such family systems, the father looks after his sisters' children in the role of father. The important consideration is the definition which each society places upon a particular relationship and the expectation which it places upon the various members of such a relationship to act in a certain manner. The personalities of the various members of such families are different from those in our society. Children expect different reactions from their fathers and their personalities accordingly develop along different lines. The roles which each society expects its members to play tend to determine the sort of men and women they will grow up to be.

The individual roles are not completely similar in any one society from one family to another. The variations between the families and between the individuals account in part for the differences between personalities. No two persons (except identical twins) have the same hereditary equipment. There is no implication throughout this discussion that a dead uniformity is produced by the action of society upon the individual. The combinations of hereditary equipment in any family are different from those in any other family. The prescribed social roles of father, mother, and children are thus played with an infinite number of individual variations in the society as a whole. These group expectations operate upon each individual only as a *general* director of personality rather than an absolute and unchangeable mould from which no one can escape.

The concept of roles also throws considerable light upon many of the difficulties of marital adjustment which are experienced in the adult family. A girl who has consistently played the role of a spoiled baby sister in her childhood may in later life have considerable difficulty in adjusting to a situation in which she is no longer the center of attraction. Many persons of both sexes find difficulty in outgrowing their infantile roles in marriage by making adult adjustments to the new situation. The roles which all individuals play in the early family group are often so pervasive that men and women can never make adequate modification of their early behavior patterns. Such persons always remain spoiled children.

A comparative study of the family as a social institution involves a further consideration of the types of roles which are found in different societies. Such a comparison may throw some light upon our own family roles which are thereby understood in their true perspective. The family system in contemporary America is not the only relationship in which

human personality can develop in an adequate manner. The institutional forms of the family in our society are social growths over extended periods of human development. They were not handed down from some supernatural source as the final word on human relationships. Men and women furthermore play their respective roles in the family because they have been taught to do so by other persons, not because they know "instinctively" how the ideal father, mother, or child is supposed to behave. The acquisition of these roles is part of the adjustment process by which their personalities are formed.

Families and family roles may be divided into three principal groups, each with a corresponding set of personality types growing out of them. These types are the *patriarchal*, the *matriarchal*, and the *egalitarian*. Certain minor variations exist between the various family groups in each of these categories, but in general they may be considered under these three headings. Each of the patterns will be considered briefly from the point of view of the different roles involved and the different personality types which result.

(1) *Patriarchal Roles*.—The Patriarch of the Old Testament was the head of his family in the most complete sense. His word was law and his women and children would not dream of crossing the wishes of their lord and master. Wives and children belonged to the patriarch in the most complete sense. The role which was expected of the man under such circumstances was that of unquestioned and autocratic head of his family. Other members of the family played distinctly subservient roles before the dominant father. This form of family organization has been the prevailing one in the civilization of western Europe for thousands of years. It has also set the pattern for the family in America. A modified form of the tradition of patriarchal dominance has come down to modern times from the colonial period as the divinely inspired form of human relationship. Our legal codes are largely based upon this conception of the family and as a result the modern woman still stands in a position of political and legal inequality with the man.

This long tradition of male superiority has profoundly influenced the personalities of both men and women in our society. These traditional influences are so subtle and far-reaching that we are often not conscious of their cultural origin and attribute all the characteristics of the two sexes to biological differences. This is particularly apparent when we consider the personality of the women. They have been obliged to devote themselves for centuries solely to those pursuits which were considered "womanly" and suitable to their supposed natures and intellectual equipment. Women have been forced to restrict their activities largely to the home until recent years. The result of this situation has been that their personalities were not considered competent to cope with the more complex and difficult affairs of business and politics. Women who attempted

to gain recognition in these fields were met by a blank wall of public suspicion on the grounds that women were biologically inferior to men in the field of abstract thought and hence were unable to understand the larger and more important issues of social intercourse. It is only recently that broad economic and social changes have given women a place in business, industry, and the professions. These changes are beginning to modify the age-old beliefs concerning what women could and could not do.

(2) *Matriarchal Roles*.—In some societies, the status of the woman is higher than that of the man. Such family relationships are called matriarchal to indicate that the mother rather than the father is the socially accepted head of the family. All so-called matriarchal families are not headed by the mother in the same way that the father dominates the patriarchal family. The power in such families may be held by the mother through her eldest brother, with the children looking to their uncle as their real father. The maternal branch of the family exerts much of the power and determines the line of descent of the children. The role of the mother is clearly more important under such arrangements than it is in the patriarchal family. The role of the father and children, and their corresponding social personalities, undergo corresponding modifications under such a system.

In a few societies, notably the Iroquois and the Zuñi Indians, the family has apparently been a matriarchy in the most complete sense. The mother was the dominant member of the family council and in addition represented the family in the larger councils of the tribe. Her decision was final in many of the matters which vitally concerned the welfare of the family and the tribe. Such supreme power has only rarely been vested in the woman. In the majority of historical and contemporary examples of the family, the husband and father plays the dominant role. His personality and that of the other members of the family are correspondingly determined.

(3) *Equalitarian Roles* —The third type of family organization is that in which neither the husband nor the wife plays a predominant role. In recent years, a significant change has been observed in the reciprocal roles of husband and wife in the middle-class American family. The influence of the wife has been growing steadily greater so that in many families a relationship of virtual equality exists in many important group concerns. This significant change in the roles of the marriage partners has been remarked upon by all recent students of the family. Some observers look upon this change with extreme distaste and talk wistfully of the happy days when the patriarchal system had not been seriously questioned. Others take the opposite point of view and view the increased status of women as a belated recognition of the abilities of women which have been repressed through the ages of the patriarchal system. This

change in woman's role may be resented or acclaimed, but its existence cannot be denied

This modification of the relative roles of men and women has resulted for many in pessimistic pronouncements concerning the future of the family. When people say that the family is "declining" or "decaying" or facing similar unpleasant fates, they are really referring to the broad change which the patriarchal family is undergoing. These persons view with alarm the fact that the patriarchal family is declining in terms of the relative status of women today as compared to that of a century ago. These gloomy commentators fail to realize that the patriarchal family is not the only possible relationship for happy and complete human existence. The family as a social institution is not declining. One form of the family is merely changing and giving place to the new. The patriarchal family is giving ground to the equalitarian family.

The equalitarian family has been caused by the same complex social and economic forces which have changed the basis of our institutional life in the past century. Developments in business and industry have opened millions of new jobs for women. A large number of modern wives are either working after their marriage or have worked before. This economic self-reliance means that the wife is no longer so completely dependent upon the husband for the necessities of life as she was under an agrarian economy when she was obliged to remain in the home. Family roles have undergone considerable modification in the face of this economic equality and the social equality which accompanies it. During the years of the depression, many men were unable to find jobs and provide for their families. The traditional predominance of the male suffered under such adverse circumstances, particularly when the wife was able to find employment when the husband could not. In business, industry, the professions, and the arts, women are playing increasingly important roles in activities which were formerly dominated by the men. The rigid domination of the patriarchal family cannot indefinitely withstand those changes.

We have suggested that the family is the focal institution for many of the important roles which society prescribes for its members. The interaction between the various members of the family is difficult to analyze because of its extremely intangible character. We cannot see or measure or weigh the relationships which make up the stuff of family life. These relationships are nevertheless the most important part of family existence. Without the interaction of its members—without parents and children doing and saying things to each other—the family would be merely a lifeless form. The importance of these psychological relationships has led to a definition of the family as "a unity of interacting personalities."¹

¹ Ernest W. Burgess, "The Family as a Unity of Interacting Personalities," *The Family*, 7 3-9 (March, 1926)

Each member of the family acts in accordance with certain rules of behavior which he has learned in the course of his personal development. He interprets these socially prescribed behavior patterns in terms of his own unique biological heritage and his own peculiar social situation. The family is not a static entity but is rather a dynamic and constantly changing human relationship. As Burgess points out, "a unity of interacting personalities" implies "a living, changing, growing thing . . . the actual unity of the family has its existence not in any legal conception, nor in any formal contract, but in the interaction of its members." Each member of each family is in constant interaction with every other member as well as with the members of other families in the outside world. The family reflects not only its own internal changes but also the changes which are taking place in the world in which its members live. This dual character of its interaction—from within and from without—makes the family a uniquely sensitive institution to the changes in society.

The Family and the Social Self

The family is the institution which exerts the most comprehensive influence upon the developing personality of the individual. Attention was directed in Chapter 1 to the importance of society in the development of human nature. It was pointed out that man is not born "human" but has at birth only the biological potentialities for becoming human. These potentialities cannot be realized without the constant influence of other persons upon the growing child, particularly such influences as are directed through the family. The family serves as the most important institution in the development of the social self, by which we mean the fully developed social individual. This role of the family arises from its unique situation in the life of the individual. This uniqueness results from the following combination of circumstances.²

(1) *Priority of the Family.*—The human infant is one of the most plastic of all animals. He comes into the world with a biological equipment made up of instinctual drives, reflexes, and visceral urges which are subject to an almost infinite modification as he grows up. Psychologists have long testified to the remarkable plasticity of the human organism, particularly in its early years. The family is the institution which is the first to direct and modify this random behavior of the infant along socially approved lines. The members of the family play an unusual role in the world of the young child. Indeed, they *are* his sole world for a considerable period. He accepts their definitions and follows their example for the simple reason that he has no alternative. Father, mother, brothers, and sisters are his sole guides for some time. Children do not copy their fathers and elder brothers from any conscious desire to emulate their blood

² We are following here the excellent analysis offered by Willard Waller, *The Family: A Dynamic Interpretation* (The Cordon Company, New York, 1938), Chapter II.

relatives but merely from the inevitable lack of choice to do otherwise.

(2) *Transmissive Role of the Family*—The family is the primary institution to transmit the culture of the group to its newest members. This transmission occurs through the words, gestures, and examples of the parents and children. The result of this situation is, as Waller points out, that "The child does not just absorb the culture of his group; he absorbs the culture as it is mediated to him by the family." The folkways and mores of our society are handed down at our mother's and father's knees, and their social expectations become a part of our personality which we can never completely escape. For better or for worse, the foundations of the individual personality are laid in the family group.

(3) *Freedom from Constraint in the Family*—The family provides an environment in which the individual grows and develops with less formal restraint than he encounters in any other group of which he is likely to become a member. The only group which approaches the family in this connection is the spontaneous play group of the young child. No matter how severe the discipline of the family may be, the child is still comparatively free to expand his personality under the direction of his parents. Surrounded by the sympathy and interest of these close relatives, the child does not encounter the formal social controls which any other group or institution places upon him. For young and old alike, the family is the institution where the actions of the individual are on the whole uncriticized and where the individual can "be himself." This does not mean that every family is an ideal environment for every child or that family contacts are always suffused with sweetness and light. The family does come closer to this ideal situation than any other institution, however, for it does not judge by the same harsh standards that the world employs. Sympathy and understanding are among the most important bases of family relationships.

(4) *Sentiment and the Family*—The individual is bound by innumerable emotional and sentimental ties to the family in which he has been reared. The deep-seated nature of these ties to the mother and father, the brothers and sisters, the home and the objects within it has been celebrated in many great autobiographies. These sentimental affiliations with the family arise gradually and unconsciously in the course of the daily process of living together. They are the basis of human personality and without them life would be a dreary business indeed. If men and women were all reared in institutions, the human personality would lose much of its richness, warmth, and variety.

The affiliations of the individual to the family are stressed by all the other institutions which base their strength upon the family. The school, the church, and the state rest many of their teachings and controls upon the institution of the family. The school supplements the teachings of the family upon many important matters and reinforces in the child many

of the basic family mores. The church instructs the individual to honor his father and mother. The system of private property, to which the state is committed, rests upon the principle of transferring this property from generation to generation through the medium of the family. The child is instructed on every side concerning the virtues of family life in general and his own family in particular. Without the active and reciprocal co-operation of the family, the other institutions would have difficulty in surviving.

CHAPTER 45

THE FAMILY AND ECONOMIC CHANGE

The Colonial Family

The family rose at dawn. The mother set about preparing the breakfast with the help of the eldest daughter. The father took the boys with him to the barn where they fed and watered the stock. The breakfast was a hearty meal, for each member of the family had a busy day before him, which required a foundation of good solid food. After breakfast each member of the family went about his or her separate chores. They assembled at noon for a big dinner and again at night for a substantial supper. In the intervening hours of daylight, and often long after sundown, everyone was busy at appointed duties.

What did they do, these men, women, and children of the colonial family? The women cooked, sewed, swept, mended, cleaned, canned, preserved, nursed, and carried on the thousand and one tasks necessary to a family which was largely a self-contained economic unit. The men hunted, fished, planted, plowed, reaped, harrowed, slaughtered, repaired, and did all of the many back-breaking jobs which were their share of the complicated business of keeping a family going under the primitive conditions of frontier life. The women were helped in their work by the young girls who thus received an exacting apprenticeship in their future life work. The boys similarly helped their fathers and became skilled in the many types of manual tasks which would ultimately fall to their lot as grown men and heads of families. The work of the family as a whole varied with the changing seasons, with each season presenting different problems to the economy of the family.

The family was the most important unit of production in the colonial society. Its efforts were devoted to the various activities required under a handicraft system. The production and processing of crops and clothes was an end which enlisted the active and enthusiastic cooperation of all members of the group. It gave them something tangible to work for, a purpose which could bring out the sentiment of mutual aid and assistance which is so necessary a part of the life of the family. Each man and woman, each boy and girl had his or her function in the life of the group. Negligence or failure was a serious business when the work of everyone counted. In the struggle for survival and for the elementary comforts of life, the family had to present a united front to the forces of the wilder-

ness. Children could see the reasons for doing their little chores almost as soon as they were able to toddle about to do them. Unity and solidarity were the result of this cooperative basis of the family.

The household work for the women was periodically interrupted by childbirth. In many colonial families, children came every year. Many of these children died and their young mothers died with them, cut off as they were from any skilled surgical attention. Children were an economic asset in the days when every growing child meant another free laborer on the farm. Widows with children found it easy to marry on the frontier where women were scarce and workers at a premium. When the wives died from overwork and excessive child-bearing, the men married again, not through any lack of affection for their first wives, but because a wife was an absolute economic necessity in the home. Marriage was the natural state for men and women alike, for there was little place for people outside of the family.

The life of the colonial family was not all work and no play. In the long winter evenings, the children would gather about the fire and play games, in which they were often joined by the grown-ups. With the entire family gathered together in a single room, recreational activities were necessarily enjoyed by the entire family group. A holiday was the occasion for celebrations in which every member of the family took an active part. A wedding was the signal for universal merrymaking and the neighbors would come from miles around to eat the wedding feast and kiss the bride. Dances and similar celebrations were attended by the family in a body. The young folks would dance to the music of a fiddle, while the old folks visited and the children slept on blankets in the spare room. In the early morning hours, the whole family would bundle into the sleigh or buckboard and head for home. They would often drive up to the barn just in time for the morning milking.

In these early days schools were scarce and formal education was spasmodic. Boys and girls were often taught the three R's by their parents, who helped them with their home work and taught them many things which the harassed teacher had neither the time nor the inclination to give them. Lucky indeed was the boy or girl whose parents had an old family set of Shakespeare or a volume of Milton's thunderous verse. The Bible was the only literature and often the only book that most families possessed and it served as the sole source of moral advice, poetry, and song. Even in those cases where the school was handy to the farm, its terms were so irregular that it often did little good. Terms were short because the girls were almost always needed at home to do the housework and the boys were needed every spring and fall to help with the planting and the harvest. Rare was the family which could scrape enough money together to send its brightest boy to college, where he could learn to be a minister, lawyer, or teacher.

Sundays were always red-letter days in the lives of our colonial ancestors, for on this day of rest they could get away from home and go to church. Everyone was expected to attend divine service and no excuses were accepted. In the drafty frame church, the settlers listened to the preacher's warnings of hell fire and damnation, which they would mull over all week as they worked in the fields or the kitchen. The most important part of the trip to church, however, was not the sermon but the visit they could have before and after the services with their friends, who had all come in their Sunday best to hear the news and talk politics or crops. The religious activities of the colonial family were not by any means confined to Sunday attendance at church. Every morning and evening, the father would take down the Bible or the Book of Common Prayer and lead the family in simple devotions. The Creator was very real and very near to these colonial families, as they worshiped in little groups in their isolated cabins all over the land. God protected the family from the dangers of the wilderness, from Indians, from flood, from starvation. He was the intimate protector and guide of the family and it was no wonder that they associated the Father of Creation with every detail of their daily lives. They naturally believed that the universe was run on the patriarchal system in the same general way that their own families were run. The same centralized male authority was apparent in the family structure as it was in the organization and operation of the world. God and their own father were equally necessary to preserve the unity of the family in the face of the trials and hardships of pioneer life.

The old folks had a definite and honored place in the colonial family. No matter whether the family lived in a spacious mansion or a rough cabin with one room and a sleeping loft, the old people were welcome. They lent the weight of their authority and their accumulated wisdom to the family councils and also spun wonderful tales to the children of the days when they were young and Indians lurked behind every tree. In the economy of the farm, there were many chores which were light enough for the old folks to do, so that they did not feel that they were a burden upon their children and their children's children. And besides, had they not taken care of *their* mothers and fathers in the days of their prime? Children were the only protection a couple could have for their old age. The thought of going to the poorhouse was a terrifying one to the old people, for it meant that your own children did not want to take care of you. Old age did not hold so many terrors when you knew that you could spend your declining years with your children and grandchildren, an honored and respected member of the family group.

Traditional Functions of the Family

This is a composite picture of the family as it existed during the first two hundred years of life in America. No single family combined all of

the activities exactly as they were outlined above, but the majority of families approximated this general picture. The colonial family was an institution which combined a great variety of human functions into one compact and intimate unit to an extent that has not been equaled by any other institution since. The family was a *social* institution in the most complete sense. Men and women were born, educated, worshiped, worked, played, and died without ever leaving the orbit of the family. This close association with the family at all stages of life is no longer possible. The contemporary family does not perform so many vital activities as it did in the days of our colonial forebearers. One by one its traditional functions have been taken over by some other institution or group of institutions. The result of this gradual loss of function is that the contemporary family is forced to assess its value to society as it has never had to before. The modern family no longer has many of the solid and obvious reasons for existence which it had in the days of our colonial ancestors.

What were the traditional functions which the family performed in the early days? We have considered these functions implicitly in our discussion of the colonial family, but it remains to make them more specific. (1) The family first of all performed a basic *economic* function and served as the central economic unit in an agrarian and pre-industrial society. The bulk of the production and consumption of early American society was centered in and about the family. (2) The early family was the principal unit for transmitting the social heritage from generation to generation. The *educational* function was thus an important part of the family activities, since it served either as the sole educational influence or as an agency which supplemented the meager work of the colonial schools. (3) The role of the church in colonial society was much more important than it is today, particularly among the urban Protestant population. This early role of the church was actively supplemented and extended through the prayers and devotions of the family, which thus performed an important *religious* function. The family and the church were mutually interdependent. The one could not flourish without the active support of the other. (4) When the serious business of earning a living was temporarily put aside and the time for play had come, the family took its pleasure as a unit. The *recreational* function of the traditional family was an important reason for its solidarity, which is gradually being lost today as the various members drift away from the family for their pleasures.

(5) The family was formerly an institution which actively looked after the social and material interests of its members, young and old. The family fought the battles of its boys and girls and protected them against outside influences of all kinds. The care and attention which were extended to the old people in their declining years further illustrate the important *protective* function which this versatile institution performed. (6) Fam-

lies were large in colonial days and children were important economic units in the family pattern. Birth control was virtually unknown. The family was the recognized unit for the perpetuation of the race and the size of the average family illustrated the enthusiasm with which this all-important *biological* function was performed. This procreative function was jealously guarded by the early family. Bitter indeed was the lot of the child born out of wedlock and bitterer still was that of its unmarried mother, as a reader of *The Scarlet Letter* can testify. (7) The colonial family provided the only socially acceptable mechanism for the sexual gratification of its members. Love and affection between members of the opposite sex were possible only within the bonds of lawful matrimony. The family thus offered the only basis for the *affectional* relationships of men and women and any extra-marital manifestations of affection were frowned upon, even though they were devoid of any sexual implication. This element of affection between the sexes transcends the mere sex satisfaction and includes such sentiments as sympathy, interest, and kindly cooperation. (8) A final function which the family has traditionally performed has been to give its members a place in the community which as isolated individuals they would not have. The family is a social institution which is more permanent than any one generation and hence it acquires a certain *status* in a settled community. In the rural family, the position of the child in the group is still determined to a considerable extent by the family to which he belongs. This function of conferring status upon its members is largely lost in the large cities, where men and women are considered as individuals and not as members of families. The affectional and the biological functions of the family almost alone have withstood the encroachments of other institutions of a modern day. For better or for worse, the modern family looks increasingly to the affectional and biological functions as the fundamental bases for its continuance in the present form.

The wide variety of functions performed by the colonial family provided ample justification for its existence as the fundamental social institution. The economic, political, and cultural changes of the past century have brought about drastic modifications of the majority of these elementary functions. In many fields of life, the family has been almost completely supplanted by commercial institutions which perform the same functions which the family formerly performed. In many cases, such as the production and processing of foodstuffs and clothing, the commercial institutions can clearly beat the family at its own game. In the present chapter and the one which follows, we shall examine the changes which have been taking place in these family functions. The most spectacular and far-reaching changes have taken place in the economic field.

Economic Change and the Family

The process of social change involves four general stages in its impact upon social institutions. Social changes are evident first in the field of mechanical invention and discovery, from which they are rapidly transmitted to economic institutions and relationships. Changes in economic institutions in turn affect such social institutions as the family, the church, the state, and the other important institutional forms. The last changes to appear are those in the related fields of social attitudes, ideologies, and values. The family has approximated this general pattern very closely in the course of the last century.

The industrial revolution was accompanied by significant inventions and discoveries in a number of different fields, many of them only indirectly related to the family. The family formerly stood at the focal point of so many points of contact that any change in any of these relationships would sooner or later communicate itself to the family and bring about changes in its organization and function. Changes in the methods of production affected the family particularly, because of the central role which this institution formerly played in the productive system. The modern family has become a center of consumption rather than one in which both production and consumption are combined. The reciprocal roles of the husband, the wife, and the children have all suffered drastic modifications as the result of this changed economic function.

This change in the economic function of the family is illustrated by the modifications which have taken place in many related economic institutions. It is a commonplace, for example, to point out that a larger number of people are eating their meals away from home than ever before. This is shown by the increased number of waiters and waitresses in the population as well as by the relative increase in the number of restaurant owners in the population as a whole. The number of bakeries and delicatessen stores has shown a similarly rapid increase in recent years, indicating that a larger proportion of the food eaten in the home is prepared elsewhere. More canning and preserving is done outside the home, as indicated by the increase in the number of people employed in canning and preserving factories. Women prefer to have these difficult operations performed in the factory rather than in the home. This is a far cry from the colonial household in which was preserved much of the food which the family consumed. In spite of the increase in home washing machines, the amount of work done in commercial laundries has increased more rapidly than the population as a whole in recent years. These and many similar indices point to the fact that the family has virtually ceased to be a complete productive unit.

The change in the economic functions of the family is further illustrated by the change in the physical character of the home itself. During the

period when the nation was primarily agrarian, the overwhelming majority of families lived in single dwellings. Dwellings housing more than one family were rare in the early days and until recent years were almost unknown outside of the large urban centers. In the period since the World War, however, the number of apartment houses has increased very rapidly, not only in the large cities but in the smaller cities as well. These apartments provide on the average much less living space per family than did the farmhouses of an earlier day. In addition, the apartments are constructed for a much simpler economic life than was possible in the large farmhouse or single dwelling in a small town. It is virtually impossible to carry on many of the traditional economic functions of the family in the average small urban apartment. The tiny kitchens and kitchenettes of modern apartments make all but the most rudimentary cooking activities out of the question. The services which were formerly provided in the family kitchen are now provided by bakeries, restaurants, delicatessen stores, dairies, and canning factories.

The decline in the traditional economic function of the family has not been uniform throughout the country. The urban family has undergone more drastic changes than the rural family. Many of the individual economic functions of the colonial family are still carried on in almost the same way by the farm family. Baking, canning, preserving, washing, and many similar activities are performed by many rural families with the same regularity as they were 150 years ago. The more isolated the family is from the urban centers, the more it has preserved the traditional economic functions of a pioneer way of life. The decline has been a relative rather than an absolute one. It ranges in extent from the small urban families who eat most of their meals away from home and live in furnished apartments to the isolated farm families who carry on many of the activities of their forefathers in the traditional manner.

The trend in the nation as a whole is in the direction of the urban rather than the rural type of family function. The continued concentration of the population into large metropolitan areas brings about this general trend. Communication and transportation are breaking down the rural customs of the people and are substituting urban customs in their place. The rural family cannot indefinitely resist these influences, even though many individual families have been partially successful up to the present time. The loss of the economic functions of the family, therefore, refers to the *trends* that are apparent in the country as a whole. Individual families and whole groups of families in isolated sections of the country will stand out for generations against this movement, which has already become the rule rather than the exception in the metropolitan centers.¹

¹ William F. Ogburn and Clark Tibbitts, "The Family and Its Functions," *Recent Social Trends* (McGraw-Hill Book Company, Inc., New York, 1933), pp. 664-672.

As a result of these changes in the economic function of the family, millions of women have been faced with an amount of leisure unprecedented in the colonial home. This new freedom is in actual practice somewhat illusory for a large number of women in the lower economic groups. Many millions of women have, it is true, more time on their hands than ever before, but many more have merely changed the location of their work from inside to outside the home. The leisure among the middle- and upper-middle-class women has resulted in a rapid growth of club activities, in a variety of charitable and philanthropic organizations, and in the increased participation of many women in such recreational activities as the movies and bridge. The other path which women have taken since the home ceased to be a productive unit has been to go to work. These women make their economic contribution to the family from the factory and the office.

Women at Work

The changed role of women in the home is illustrated by the rapid increase of the number employed outside of it. In 1880, there were only 2,500,000 women gainfully employed in the entire country. This number increased to nearly 5,000,000 in 1900, of whom almost 2,000,000 were married. In 1930, over 10,000,000 women were gainfully employed outside the home, approximately 3,000,000 of whom were married. The mere fact that this impressive number of married and unmarried women are employed outside the home indicates the nature of some of the changes which have taken place in the functioning of the family. Both types of women perform an important function in the family pattern, but the nature of that function has changed since colonial days.

The great majority of married women in business and industry are working because they have to. A good deal has been written about "career women" who choose to become lawyers, doctors, and business executives primarily and mothers only secondarily. A number of married women are, it is true, doing something which might be called a career and their number is constantly increasing. The majority of wives and mothers, however, are not working in stores, offices, and factories to satisfy any craving for self-expression but rather to support dependent children or to supplement a family income which is clearly insufficient to provide more than the barest subsistence. Economic need of the most elemental sort, rather than a wish for a career, has driven the great majority of married women to accept jobs which take them away from their homes.

The element of necessity rather than self-expression is indicated by the distribution of married women in business and industry according to the census of 1930. The various categories in which married women worked were as follows:

<i>Occupation</i>	<i>Per cent</i>
Domestic and personal service	29 6
Manufacturing and mechanical industries	17 5
Clerical occupations	18 5
Trade	9.0
Professional service	14 2
Agriculture	8 5
Transportation and communication	2 6
Public service	0 2
	<hr/> 100 +

With the possible exception of those married women engaged in "professional service"—of whom the bulk were school teachers—few of these gainfully employed wives and mothers could be considered as career women. Domestic service and machine tending are not calculated to stir the ego of the working woman. The difficulties of trying to perform the roles of mother, wife, and housekeeper in their own families while engaged as servants, saleswomen, and laundresses outside the home are beyond the abilities of the great majority of women. Only a few can act in these multiple capacities and do justice to any of them.

The contribution of the working mother to the family income from such activities is usually small and incommensurate with the effort which she expends and the time she takes from her home. Wages of women in business and industry have always tended to be lower than those for men, even when the same work is done by both sexes. This disparity in women's wages has resulted from a combination of factors. The principal reason is the fact that women are generally employed in unskilled occupations where the supply of workers is very great and where organization is difficult. The work of women has often been considered of a transitory nature so that it was not believed to be worth while to organize them as union pressure groups. The result has been that many women work long hours at uninteresting, difficult, and often dangerous work for small wages in the hope of maintaining the income of the family on a level of minimum health and decency. As a result of the marginal character of their work, they are able to contribute only relatively small amounts to the family budget.

In the colonial family, the mother had her children constantly about her in the home, where she was able to fill the role of mother in an adequate sense. When the young mother of today is employed in the factory or the store, her role of mother is inevitably neglected. Most working mothers work because of economic necessity and as a result are unable to afford the proper supervision for their children. The children run wild on the streets and in the alleys of the large cities, where they are exposed to many vicious and criminal influences. Their conduct is determined by the older boys who have served their apprenticeships on the city streets

and are already well advanced on the road to criminal behavior. They are deprived of the sympathetic interest and companionship of the mother at the time when they most need it. The few hours that their mother is able to spend in the home are taken up by the tasks of keeping the house clean and the food prepared. There is little time for the children. In the slum areas of our great cities, thousands of young children yearly take the first overt step toward lives of delinquency and crime merely for want of a mother's care. Under such conditions, the family cannot function as an adequate social unit. Many criminal careers can be traced directly to such inadequate home environments.

The Income of the Family

In our pecuniary society, family income is of fundamental importance. Without a regular income in cash or its equivalent, the majority of families cannot continue as economic units of consumption. Deprived of their economic foundation, they are seriously handicapped in carrying out the related functions which depend upon economic stability. Some families are able to eke out a miserable existence at subsistence farming with little or no cash income during the year. Many families of tenant farmers, sharecroppers, and migratory workers never receive more than a few hundred dollars in cash in any one year and exist very near the starvation level. The majority of families are directly dependent upon a daily, weekly, or monthly cash wage. The size and regularity of this wage is the most important single consideration in the welfare of the family.

Information on family incomes in the United States has been difficult to ascertain with any degree of fullness and accuracy. The majority of studies enumerate the incomes of individuals and not of families. The income tax figures are the most important source for such data. Various estimates have been made of the relative distribution of family incomes, starting with that of the National Bureau of Economic Research in 1918. The most important point emerging from this study was the estimate that approximately 90% of all families in the United States received an income of less than \$2,500 and that only 6% received an income of more than \$3,000.² Subsequent studies undertaken during the period of the 1920s indicate that this relative distribution was maintained during the period of prosperity. The most comprehensive study of family incomes, however, was made during the decade of the 1930s by the National Resources Committee. We shall examine these figures in some detail as constituting the best information available on this important subject.³

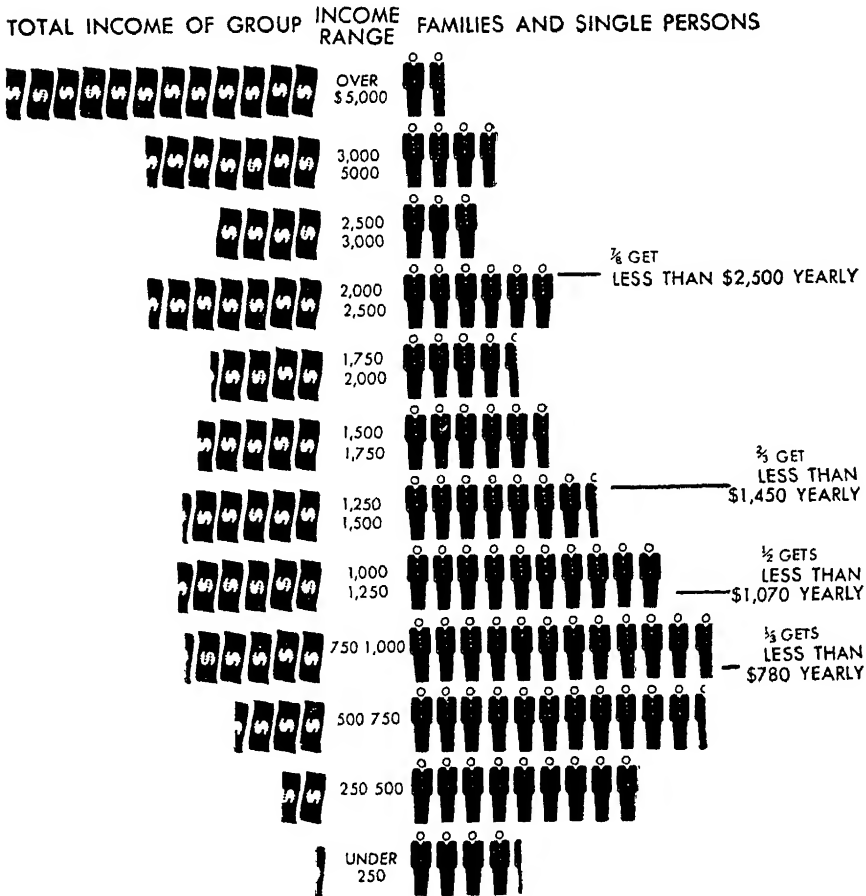
It is important at the outset to understand clearly the implications of

² National Bureau of Economic Research, *Income in the United States* (Harcourt, Brace and Company, New York, 1921), Volume I, pp. 134-135.

³ National Resources Committee, *Consumer Incomes in the United States*, Washington, 1938.

the two concepts involved in this study—namely, “family” and “income” The family is defined by the Committee as “two or more persons living together as one economic unit, having a common or pooled income and living under a common roof.” The estimated number of such family

DISTRIBUTION OF INCOME 1935-36



Each dollar bill represents 1 billion dollars

Each person represents 500,000 families or single persons

[Pictograph Corporation, for Public Affairs Committee, Inc. By permission of Pictograph Corporation.]

groups in the United States in the year 1935-1936 was 29,400,300. These groups included 115,966,000 persons out of a total population of 128,024,000. Only 12,058,000 persons out of the total population did not live in family groups. The bulk of these non-family persons, 10,058,000 in number, were single men and women maintaining separate economic establish-

ments The other non-family group, numbering approximately 2,000,000 persons, lived in institutions of various types where they were not self-supporting The important consideration for our purposes is the fact that about 91% of the population of the United States at any one time live in family groups.

We come to the second important definition, family income. This concept includes "the total net money income received during the year by all members of the economic family, plus the value of certain items of non-money income" This definition is a very inclusive one, as indicated by the following items: "Money income comprises the net earnings of all family members, including work relief earnings and earnings from roomers and boarders and other paid work in the home, net profits from business enterprises operated or owned by the family and from property bought and sold within the year; net rents from property, interest and dividends from stocks, bonds, and other property, pensions, annuities, and benefits, gifts in cash insofar as these are used during the year for current living expenses, and income received as rewards, prizes, alimony, or gambling gains." The complex character of modern corporate society is indicated by this diversified classification of the sources of family income. The family as the unit of income and consumption is the central receiving and dispersing station for a wide variety of services.

The researches of the Committee indicate a wide disparity between the incomes of American families in the various economic strata. These disparities suggest that America is no longer a relatively classless society as it was in the days of the frontier. It is no longer possible for the unemployed to move westward to the next frontier and establish themselves in new and more favorable surroundings. It is becoming more and more difficult for a man to build up a great corporation with nothing but Yankee wit and his two hands. The overwhelming number of families in the middle and lower economic groups will always remain in those groups no matter how hard they may work and save. The majority of men and women born into great wealth will hand on that wealth to their children and their children's children in the form of trust funds. The phrase, "from shirtsleeves to shirtsleeves," will lose much of its truth as the children and grandchildren of the great industrialists continue to receive large incomes from these irrevocable trust funds. A permanent class structure is the result of these permanent disparities in family income.

The Committee found that the majority of families receive annual incomes below the minimum which social workers consider necessary for family health and decency. The famed American standard of living is open to considerable question in the face of the following figures. Of the 29 million families in the United States, 14% received *less than* \$500 total income in the year 1935-1936 Almost half, or 42%, of all families received an income of less than \$1,000 in the same year. Sixty-five per cent

received less than \$1,500, while 87% received less than \$2,500. Only 13% of all families were in the income brackets from \$2,500 and up. The distribution may be seen more graphically from the following table.

<i>Income</i>	<i>Per cent</i>
\$10,000 and up	1 00
5,000-10,000	2.00
2,500- 5,000	10.00
1,500- 2,500	22.00
1,000- 1,500 .. .	23.00
500- 1,000	28.00
500 and under	14 00
	<hr/> 100.00%

In computing the total family income, credit was given to farm families for the value of food and other consumption goods grown and produced on the farm for home use. The criticisms usually leveled against computations of family incomes—that the value of farm products is omitted—therefore does not apply to these figures.

When these figures are considered in terms of the relative distribution of the incomes of all families in the country, the disparity is even more striking. The 42% of all families with incomes under \$1,000 received less than 16% of the total family income of the entire country. At the other end of the scale, the 3% whose incomes were over \$5,000 received 21% of the total, and the 1% with incomes over \$10,000 received 13% of the total income for all families. The implications of such a distribution for the economy as a whole are very significant. American industry is organized on the principle of mass production and mass markets. The mass markets can only come from the incomes of millions of middle and lower class families in the country. When almost half of these families receive a yearly income of less than \$1,000, it is clear that their purchasing power will be very low and that they will be unable to buy the goods which the industries are capable of turning out. These industries will be forced to discharge some of their workers, whose purchasing power will be seriously curtailed, thus further decreasing the aggregate of goods which can be sold. This continued underconsumption, growing out of the disproportionate distribution of family incomes, presents one of the most serious economic and social problems of our day.

Further examination of these income figures discloses further important implications for the family as a unit of consumption. If the total incomes of all the 29,400,300 families were divided equally, the resulting figure would be \$1,622 per family. This is the "average" family income, which for our purposes does not mean very much. The relatively few families with incomes over \$10,000 pull the average figure up so that it is far above the figure which the great majority of families actually receive. In the

year under consideration, more than 4,000,000 families received less than \$500; the arithmetical average does not give the proper weight to this mass of families living on the subsistence level. A more accurate figure in terms of all the families concerned is the *median* family income. This term means that exactly half of the actual family incomes are above and half are below the median figure, which is \$1,160. The majority of families are clustered about the \$1,000 level, with a large percentage below and a slightly larger percentage immediately above it. This median figure is a far cry from the comparatively meaningless average figure of \$1,622. It is an even farther cry from the high income which is traditionally supposed to be characteristic of the American family.

The Adequacy of the Family Income

The overwhelming majority of American families receive less than \$2,500 per year, good years and bad, prosperity and depression, no matter what political party is in power or who is in the White House. It is pertinent to assess these income figures in terms of the standard of living of which the American people are so proud. If the richest nation in the world is to justify its boast of the world's highest standard of living, its economic machinery should provide an adequate income for the majority of its families. This is not the case. America has the most impressive industrial plant in the world. The income which this plant provides its families is not adequate to keep it going at full speed. The result is that many of the families lack the food, clothing, and shelter which the plant is capable of providing.

It is important to define our terms. We must distinguish between the *standard* of living of the American family on the one hand and the *scale* or *level* of living on the other. The standard of living would seem to be a very simple and obvious concept, but it is in reality a very difficult and intangible one. It is not easy to define since it consists of an attitude or related group of attitudes toward a large number of goods and services which the family consumes or would like to consume. The American standard of living is the way of life which Americans consider fitting and proper for themselves as the inhabitants of the richest country in the world. The concept of the standard of living thus includes many of the things which all Americans would like to have and which many Americans actually do have. The standard of living is made up of a number of customs and traditions which are characteristic of a particular society. The attitudes which go to make up the standard are themselves social products and reflect the society in which they are produced. The American standard of living is a reflection of the American way of life. It is reflected in the fact that more American families have automobiles than bathtubs. The automobile is a visible symbol of material success in a society where material success is the most important criterion of the good

life. The bathtub, on the other hand, is not so important to the American way of life for the obvious reason that plumbing arrangements are not so visible as automobiles. Families go without sufficient food or adequate medical care rather than give up their automobiles. Their undernourishment or their sickness can be concealed from their neighbors, but the loss of the family automobile is immediately recognized as abject failure in the struggle for life.

The social attitudes which make up our standard of living are absorbed from the people with whom we associate. Our families are the most important source of these definitions of what we need and what we do not need in the course of our daily lives. Standards of living are relative between different economic classes in the population. The family takes over the definitions of "necessities" and "luxuries" from the social class in which it lives. The luxuries of the poorer classes become the necessities of the more wealthy, with the result that there is a wide variation in standards of living between classes. Such intangible and relative elements making up the standard of living make it very difficult to measure in any objective way.

The *scale of living* is more easy to measure, since it refers to the way that a people actually live, the total expenditures which they make for the luxuries and necessities of life. The scale of living can be estimated in terms of the actual amount and quality of food consumed by a family, the kind of house it lives in and the number of conveniences it has, the kind of automobile it drives or whether it owns an automobile at all, the number of books it reads, the number of times it attends the movies in a month—and so on down the line of the actual goods and services which the family consumes. It follows that there is a considerable difference between the standard and the scale of living, between what we should like to have and what we actually have. American families have the highest scale of living in the world, measured in terms of the machines which they use in their daily life. They also have the highest standard of living in the world, measured in terms of the larger and faster and smarter machines which they would like to have. That is one reason they are so dissatisfied. Their desires constantly surpass their possibilities of satisfaction.

The disparity between the American scale and standard of living has resulted from the combination of factors which have made America both the wealthiest nation in the world and the nation with the greatest disparities in wealth. The scale of living of the American family, measured in terms of per capita ownership of automobiles, radios, and electric refrigerators is the most pretentious that the world has ever known. When we pass from these mechanical devices to the elements of food, clothing, and shelter, the disparity in favor of the American way becomes less pronounced. American workmen ride in automobiles on a scale undreamed of

even in the most advanced European countries. But Americans do not necessarily eat more and better food, wear better and more comfortable clothes, or live in pleasanter and more convenient apartments. Americans of all economic classes consider an automobile a necessary symbol of social respectability. European workmen prefer to ride bicycles and spend their money in some other way. The social definition of the good life differs between the two cultures. Americans are taught to want more automobiles, radios, and electric washing machines than their European cousins. They are also taught to want more of these things than they can possibly buy. We have the curious situation of the world's highest consumption of these products in America and at the same time a larger probable amount of dissatisfaction over the fact that they cannot buy more. Happiness and satisfaction are difficult to measure, just as the attitudes making up the American standard of living are difficult to measure. It is reasonable to assume, however, that the billions of dollars spent in creating desires through advertising in America have not been spent in vain. The desires are here, even though the income to satisfy them is lacking. The fruitless attempt to "keep up with the Joneses" brings dissatisfaction when the family is unable to do so.

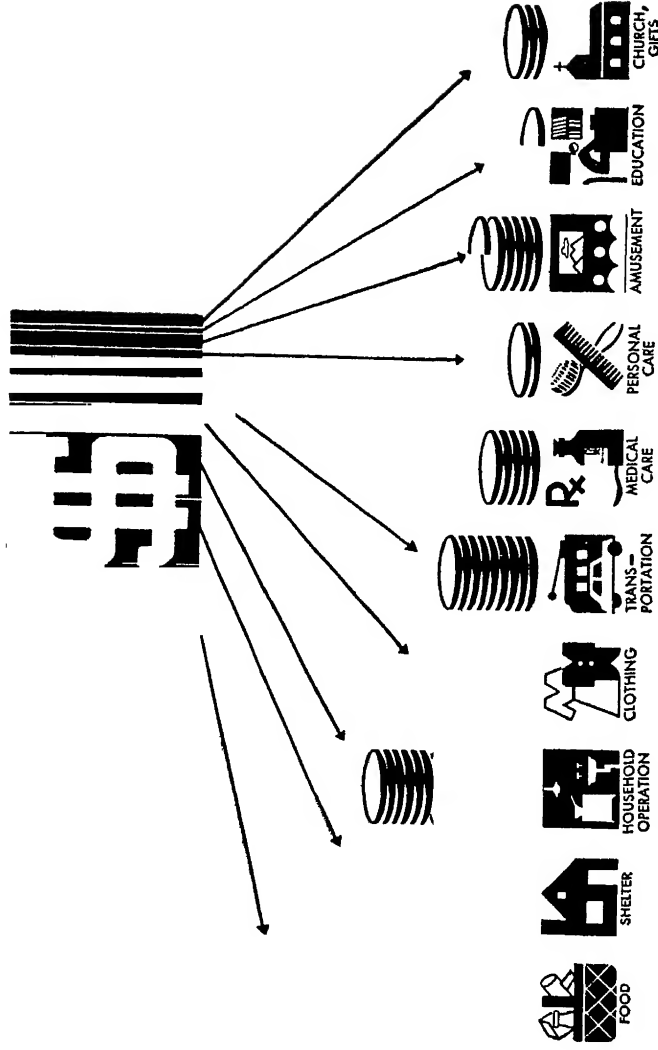
Levels of Living

The adequacy of the family income in the United States involves many of the same considerations which were advanced in our study of the standard of living. Students of home economics and social welfare have suggested the following levels of family living.

(1) *Minimum Subsistence Level*.—This is presumably the lowest level on which the family can live in the American economy. It comprises roughly the dividing line between comparative poverty and abject poverty. The figure of \$1,000 per year is often given as the level of minimum subsistence for a family of three or four persons. On this basis, the majority of families are living on or near the minimum subsistence level, with 42% of the families falling below it. A family of the average size can *exist* in a purely physical sense on considerably less than \$1,000 per year, as evidenced by the fact that 14% of all our families did manage to exist on an income of less than \$500. A family can keep from freezing and starving to death on an incredibly small amount of money per year, as many of our sharecroppers, tenant farmers, and migratory working families can testify. These facts do not make the low income of a large proportion of our families any more defensible from the point of view of social welfare. The majority of American families receive yearly incomes which are insufficient to insure the functioning of the family on an effective economic and cultural basis. This fact is clear, no matter what arbitrary figure is taken as the minimum level of subsistence.

(2) *Health and Decency Level*.—This criterion of the adequacy of

WHERE A TYPICAL FAMILY DOLLAR GOES



Each coin represents one penny

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family income is as difficult to define as the minimum subsistence level. The social attitudes present in all of these evaluations make any precise figure impossible to defend. The health and decency level is higher than the minimum subsistence level. We cannot say how much higher in terms of dollars and cents. Any figures given are merely arbitrary and should be considered in that light. The health and decency level includes not only the absolute minimum of food, clothing, and shelter necessary to sustain life but also some of the decencies of life. Health and decency would involve such items as "physical, mental, and moral health and efficiency for adults, the full physical and mental growth and development of children, and provision for their moral welfare." Social welfare experts have calculated that the lowest level at which this ideal could be approximated for an urban family of three or four persons is \$2,500 per year. Eighty-seven per cent of the families in the United States receive less than this figure every year. The majority of American families are unable to afford sufficient medical and dental care necessary to maintain health at its peak, to live in houses and apartments which provide the comforts and conveniences necessary for adequate family functioning, to educate their children in the way they would desire, and to provide adequately for their old age.

(3) *Comfort Level*—Approximately 10% of American families have incomes from \$2,500 to \$5,000 and 2% from \$5,000 to \$10,000. If we set the latter figure as the arbitrary upper limit to the comfort level of living, it appears that about 12% of our families fall in this general category—that is, from \$2,500 to \$10,000. This classification may be open to criticism from two sides. At the lower level, it may be objected that a large family receiving only \$2,500 per year is far from living in comfort by any stretch of the imagination. On the upper level, it may be objected that families with incomes approaching \$10,000 are in the wealthy class. Such a criticism is perhaps justified, but it is necessary to set some arbitrary limits to the various income levels, even though the marginal cases at each end verge imperceptibly into the higher and lower levels. At the comfort level, the family is presumed to be able to afford such amenities of life as higher education for the children, leisure time facilities for both parents and children, travel in the United States or abroad, ample insurance to provide for the old age of the parents, and other such material and spiritual comforts which make life worth while. In view of the fact that wants increase more rapidly than income, it is safe to say that many families in these income brackets do not consider themselves very far above the health and decency level. Nevertheless, if the term comfort has any meaning at all, persons in these income levels are able to afford the majority of the simpler comforts of life. They may not be able to keep up with the Joneses, but they are far ahead of the great majority of their fellow citizens.

(4) *Wealth Level*.—For purposes of this discussion, those families with incomes of more than \$10,000 per year are classified as “wealthy.” Such a designation would be received with vigorous denials by many of the families concerned, who would doubtless maintain that they can hardly make both ends meet on such an income. On a comparative basis, however, the 1% of the nation’s families in this income bracket are wealthy. They are able to purchase not only the “necessities” but the majority of the “luxuries” of life. Expensive education, travel, elaborate equipment for leisure time activities, and several cars per family are some of the goods and services which they are able to command. The important consideration however, is not the actual amount of wealth involved but rather the fact that the percentage of wealthy families is so small in the country as a whole. Even with the relatively modest criterion we have used for wealth, the number of families in this classification is very small.

The father of the family is still the principal bread-winner in the great majority of families. He is the only bread-winner in more than half of them. It is difficult to estimate the relative sources of income with any degree of exactness, but it is safe to say that 60% of all families are supported by the father or husband alone. A large percentage of the total earnings of all families comes from the sole efforts of the bread-winner. Wives contribute to approximately 20% of the urban families in the form of cash income and to all of the farm families in the form of services rendered to the economic welfare of the family.

It is impossible to determine accurately either the percentage of families receiving some financial assistance from children under 21 or the relative amount of that assistance. The labor of children under 16 is decreasing in the country as a whole. The number of young people under 21 employed in gainful activities and contributing to the support of the family is probably also decreasing. The efforts of the mother and children are often indispensable to the support of individual families, but in the aggregate they do not compare with those of the father. In the colonial family, all of the members were engaged in a cooperative economic enterprise, with each person having his or her specific functions. In many urban families, the role of the wife has undergone a drastic change. Her part in the cooperative economic process is not so obvious as it was in the colonial family. She is either forced to make her contribution in the form of work outside the home or in the less spectacular form of personal services performed for the family. Whether she works in the factory and office or takes care of the house or apartment, the actual business of economic support has increasingly been taken over by the husband. If the family is deprived of his services, they can carry on without him only with extreme difficulty. The regular employment of the father is the economic foundation of the modern urban family.

CHAPTER 46

THE FAMILY AND SOCIAL CHANGE

The family is more than an economic institution, even though the economic foundation is basic to the life of the family as a functioning institution. Without the stability provided by a regular income, an individual family may suffer considerable reduction of its influence and may even disintegrate completely under a period of prolonged unemployment. But the family cannot live by bread alone. It must perform other functions than merely acting as a unit for the consumption of goods and services if the individual members are to derive the greatest possible benefits from it. The family of a former time did perform many vital functions other than the economic, as we observed in the preceding chapter. Many of these traditional functions have been taken over by other institutions in recent years, leaving the family with a decreasing sphere of influence on its individual members. The loss of these functions is changing the family as a social institution and is also changing the individuals who are the products of the family. These modifications in the individual personality are most apparent in the large cities, where the family has undergone the most drastic changes. They are not so apparent in the small towns and rural areas of the country, where the traditional family patterns have been more firmly retained.

In the present chapter, we shall consider the extent to which the functions of the contemporary family have been modified by the changes in the great society of which the family is an integral part. The *religious*, *educational*, *recreational*, and *protective* functions have undergone perhaps the most significant changes, with the result that some of these activities have been almost completely taken out of the hands of the individual families and given over to commercial or state organizations. The *status* function of the family has been largely left behind in the large cities, where the individual faces his associates in business and recreation on his own merits as an individual rather than as a member of a family. In the face of these vicissitudes, the family has retained completely only two of its traditional functions, the *biological* and the *affectional*. The family is still the recognized institution in which to bear and care for children. It is still the principal socially acceptable mechanism for the affectional relationships between men and women. The growing personality of the child still receives its general direction in the early years of the family

union. These physical and social aspects of the family will assume much greater importance as the other functions are gradually lost or modified beyond recognition by commercial and political institutions.

Recreational Functions

When the work of the modern family is done for the day, its members no longer gather in the evening to play games and indulge in the various recreational pastimes which formed so important a part of the life of the colonial family. The life of the home, the school, and the office presents so many different problems that the interests of the various members of the family have lost their former similarity. Mother, brother and sister, and father have lived such completely different lives during the day that their definitions of what constitutes recreation are often not the same. The mother may desire an evening at the movies after the humdrum hours spent in the home. The father, on the other hand, may very well have seen quite enough of the outside world for the time being and may wish nothing better than to take off his shoes and listen to the radio. The children may have their own ideas of recreation, which in all probability will be carried on outside of the home with companions of their own age and choosing. Whatever the social implications of this general situation may be, it is clear that the family no longer serves almost exclusively as the central unit for recreation.

The family apparently does not make the effort that it formerly did to provide recreation for the children in the home. This is indicated by a study made both of rural and urban children, who were asked how much time they spent at home with the family in the evening and what they did when they were there. They reported that approximately two-thirds of the total time spent at home was spent either reading or studying. Both of these activities are valuable in themselves, but they are solitary and not family in their nature. These evenings at home are spent in the family circle, but the family seldom acts as a unit on these occasions. Relationships between parents and children are confined to random conversation for the most part, which breaks into rather than supplements the reading and studying of the children. Under such circumstances, the child looks forward eagerly to evenings spent away from home, for they are the occasions on which something really exciting and stimulating may happen. These activities away from home are carried on for the most part with friends of the child's own age, rather than with his parents. The activities which he shares with the latter are confined largely to the humdrum preparation of his school work or solitary reading. The family loses the central role in the recreational life of the child which it formerly held.

The changes in the methods of production have brought about a significant modification of the family role in the recreational process. In the days of the rural and pioneer family, the family worked from sunup to

sundown, with very little respite during the day. Leisure time as such was comparatively unknown for any extended periods except in the middle of winter. The members of the family had neither the time, the inclination, nor the money to engage in any very extensive recreational activities away from the family circle. Nor were the facilities there even if they had so desired. The rapid decrease in the hours of labor of the average worker in recent years has resulted in an increasing emphasis upon leisure time pursuits. These pursuits are for the most part of such a nature that they are indulged in by individuals rather than by families. The majority of commercialized recreational facilities involve the passive participation of large numbers of persons who are for the moment isolated from their families and acting as individuals. These elaborate commercial institutions compete with the family for the leisure time of its members. Even though the total amount of leisure has increased since colonial days, the number of non-family recreational institutions has increased much more rapidly, both in number and in importance. The relative position of the family has declined in the competition with other institutions for the free time of its members.

The growth in commercial recreation has not taken place completely at the expense of the family. It has been estimated, for example, that 65% of the urban families go to the movies more or less regularly as a unit. On the other hand, the amount of psychological interaction between the members of the family at a motion picture is less than it is when they are all actively engaged in playing a game or reading aloud. As they sit side by side in the movie theater, they are together physically, but they may be mentally worlds apart. In the past ten years, the average weekly attendance at the movies has varied from 60 million to 110 million persons. The average weekly attendance for the year 1938 is estimated at 85 million persons. This does not mean that two-thirds of the total population of the United States attend the movies every week. It does mean that a large but indeterminate number of individuals and families attend several times per week. In spite of the comparatively large number of urban families who make weekly pilgrimages to the 15,000 motion picture theaters, the movies constitute probably the most important single competitor of the family as a recreational unit.

There is no moral implication in this competition which commercial and political agencies are providing the family in this connection. The growth in such elements of recreation as public playgrounds and municipal parks, for example, means that more provision is being made outside of the home for outdoor activities. This change is eminently desirable from the point of view of social welfare, particularly as it is taking place in the large cities where many families have no desirable provisions for recreation in the home. The increased number of golf courses and tennis courts also provides agencies which are competing against or at least supplement-

ing the home as a center of recreation. Such increases are an inevitable and desirable aspect of the broad social changes which have taken place in the last century and have transformed our society from a rural to an urban one. As a result of these urban trends, the family has lost many of the recreational functions which formerly served to keep it together. Certain of these recreational functions are undoubtedly carried on more efficiently by the commercial agencies. There is no intrinsic reason why they should not be taken out of the hands of the family. We are merely pointing out that the family no longer performs them.

Educational Functions

The teacher has been called a substitute parent. The teacher performs many of the functions which the mother and father formerly performed in transmitting the social heritage from one generation to the next. In the colonial family, the child was given practically all of his instruction through the medium of the informal education by the family. This instruction included those subjects which were conventionally taught in schools, as well as the manual skills and techniques which were not taught in any school but which were necessary for the individual in order to carry on his daily activities. Both of these aspects of knowledge have been taken over in large measure by the school in recent years. The child is given instruction in languages, the classics, literature, science, and art in the modern school. Boys are also given instruction in manual training and the industrial arts and girls are given training in home economics and domestic science. The school has taken over those elements in the social heritage which relate to the practical life work of the boy or girl, as well as those less immediately practical elements which are assumed to make life more beautiful and meaningful.

The relative importance of the home and the school in performing the general function of education has changed with the social structure. In the days when this country was predominantly agricultural, the division of labor was not very intricate and the majority of boys grew up to be farmers and the girls to be wives and mothers. In the modern corporate economy, this situation has changed and labor has become highly specialized. The majority of boys do not want to be farmers. They want rather to be electrical engineers, doctors, airplane pilots, radio specialists, chemists, or business men. The majority of these activities require exact and scientific training which the family is unable to provide. In a somewhat similar fashion, girls no longer want merely to be housewives but want to spend at least part of their lives as stenographers, school teachers, fashion designers, interior decorators, private secretaries, or air line hostesses. A considerable degree of special training is likewise required before a girl is able to enter these professions. The school and not the family stand ready to provide these services. The family has not failed in its educa-

tional function, for it was never intended to function in this highly specialized manner. Society has become more complex, which has necessitated a more elaborate and specialized group of institutions to transmit the cultural heritage and instruct the young people in the knowledge and skills which they will find necessary to adjust to that society

The modern school has taken over many of the instructional functions which the family formerly performed. The school has also taken a steadily increasing proportion of the child's time. Children start school younger than they formerly did and they spend a longer time every day at the school. The relative number of children of five years of age in school has grown rapidly in recent years and in many communities the school is reaching down even farther into the early years of the child. The growth of the kindergarten and nursery school is a case in point, where mothers are relieved of the care of their children at an earlier age than was formerly believed possible or desirable. In the upper grades, supervised play and supervised study are increasing the length of the school day and the number of hours the child is away from the home. This trend may be desirable in the long run for the personality of the child. The experts in child guidance and child care to whom the growing boy and girl are entrusted may be more able to direct their development in a socially desirable manner than the untrained mother. The experience which the child acquires through supervised play may be particularly desirable from the point of view of inculcating at an early age attitudes of cooperation and consideration for the rights of other persons. From the point of view of our discussion the important consideration is again that these activities are no longer the exclusive or even the major prerogative of the family. The modification of another traditional function is taking place.

There are still many parts of the country where the schooling is not adequate and where the education of the child is still largely the task of the family. This situation is gradually being remedied as more schools are being built in rural areas. The number of boys and girls in school is still growing somewhat more rapidly than the number of children in the population as a whole. This indicates that the saturation point has not yet been reached and many children are not yet in schools who should be. This trend toward a larger number of school children is accompanied by a corresponding increase in the number of days out of the year that the average child is in school. The school terms were very short in the frontier period and are still comparatively shorter in the rural areas of the North and South. In the period from 1900 to 1928, however, the average length of the school term increased from 144 to 172 days. This means that children were away from home 28 more days out of the year in 1928 than they were in 1900. It is reasonable to assume that the relative influence of the family on the education of the child has decreased considerably during

the same period. The 30 million pupils in the schools of the nation are spending more time with their teachers and less with their parents

Religious Functions

The relationship between the family and the other social institutions in the community is clearly illustrated in the decline in the religious functions of the family. In the early days of this country, the church was an institution of great importance to the life of the community and the life of the families making up the community. The activities of the church were directly supplemented by the family and the traditional religious attitudes were inculcated through the early training of the family. The decline in the relative importance of the church has been accompanied by a corresponding decline in the religious function of the family group. These changes have not been uniform in the various parts of the country or between the different religious denominations. In general, it is safe to say that the decreasing importance of both the church and the family as religious institutions has been an urban rather than a rural phenomenon and a Protestant rather than a Catholic one. Regional and denominational differences must be considered in any of the statements which follow concerning the declining religious functions of the American family.

The data for these statements come from various studies of the religious activities of the family unit. Such overt activities are less difficult to measure and evaluate than the more intangible elements of religious beliefs and doctrines. We can study directly what the family *does* in these matters, but we can only infer what it *believes*. The participation in family prayers and other devotions, for example, was one of the most important activities of the colonial and pioneer family. The various members derived considerable spiritual inspiration from these traditional practices, which also served to bring the family together periodically in a mood of reverence and emotional exaltation. The change which has taken place in this particular phase of family practice is indicated by the fact that only about one out of eight school children of Junior High School age today take part in family prayers. The sample on which this study was based was composed of boys and girls from the country, from small towns, and from the large cities of the country. The study indicated that the proportion of children participating in family prayers was somewhat larger in the rural areas and small towns than it was in the urban areas of the very large cities.

Differences between rural and urban areas are further suggested by the disparity between the family attendance at church in the two areas. The rural family has retained much of its religious solidarity from the point of view of church attendance at least, for 85% of the children in these areas attend church with their parents. In the large cities, only 40% of the children reported joint family church attendance. The differences between

rural and urban areas in other phases of social life are undoubtedly responsible for a considerable part of this disparity in church attendance. The church still serves as the center for social intercourse and recreation in the country, so that the family goes to church as much to see their neighbors and hear the news as to worship in the traditional way. This function of a social and recreational center is not performed to the same extent by the church in the large city. Other organizations in the metropolis have arisen to compete with the church in this connection and many urban churches have resorted to all manner of non-religious activities to attract new members and retain the old ones.

The Bible is still an important source of spiritual guidance and inspiration to many individuals and families throughout the country. This reliance on the Bible is also more characteristic of the rural than of the urban families. Twenty-two per cent of the rural children said that the Bible was read more or less regularly in their families, while only 10% of the urban children reported the same cooperative activity. The practice of family grace at meals is in many families carried on as a sort of vestigial remain from a period when the great majority of families thanked the Creator for every morsel which was placed upon their table. In 38% of the rural families, this practice was still carried on, while 30% of the urban families similarly reported. The closer relationship between urban and rural families in this instance may be due to the fact that this act of grace is a comparatively simple and often perfunctory gesture which can be performed without much trouble. The fact that many more families reported family grace than family Bible reading would tend to bear out this supposition.

Four types of religious activity have been considered in connection with the family—going to church together, saying grace at meals, family reading of the Bible, and giving family prayers and devotions. The frequency with which these activities are carried on in the average American family today decreases in the order named, from group church attendance to family prayers. The only activity which is performed by more than half of the families is church attendance and this is preponderantly a rural phenomenon. The picture of the pioneer family in direct and frequent communication with the Creator has undergone a drastic transformation.¹

Protective Function

The family was formerly the institution which provided protection of all kinds for its members—in infancy, in sickness, in old age, and when beset in the prime of life by the difficulties and tribulations of the world. The family formerly offered physical care and guidance to the growing

¹The data on the religious functions of the family were largely taken from E. W. Burgess (Chairman), *The Adolescent in the Family*, White House Conference on Child Health and Protection (D. Appleton-Century Company, New York, 1934), pp. 171-172.

child, spiritual aid for the adolescent and the grown up, and support for the indigent in old age. In this way, a wall of protection was thrown about the individual from his birth to his death. Unfortunate indeed was the person who did not have a definite family tie at all times in his journey through life. The changing times have brought changes to this age-old function of the family, which in recent years has been taken over by powerful commercial institutions and by the equally powerful institutions of democratic government. The commercial institutions were the first to meet the need for protection which the family was no longer able to provide in the chaotic modern world. When it became increasingly clear that the majority of individuals were not able to afford the protection offered by these commercial agencies, the state was forced to offer protection to its citizens either free of charge or for a nominal sum.

There are many concrete indications of this gradual elimination of the protective function from the repertoire of the modern family. In the field of health, for example, the increase in the urban budgets for public health and sanitation indicates that this important matter is no longer left to the resources of the family alone. In the period from 1909 to 1929, the number of hospital beds increased by 115%, while in the last-named year almost a third of all the babies saw the first light of day in hospitals. This added care for the beginning of life has meant that the infant mortality rate has decreased rapidly over the recent decades. The hospital is able to provide better care for mothers and children than a great many families, particularly those in the under-privileged classes. Under frontier conditions, the death rate of infants and their mothers was appallingly high. Medical advances have made it possible to transfer this protective function of the family to specialized institutions, with a consequent decline of suffering and death.

In the early days of the frontier family, life and property were protected against the depredations of Indians and robbers largely by the family functioning as an armed unit. In the modern world such family precautions are almost completely obsolete. The average city dweller does not have a rifle leaning against the wall to protect his family against burglars, nor does he carry a revolver on the street as insurance against footpads. These functions of protection against physical violence and theft have been taken over in large measure by the various agencies of government. The modern family looks to the police, detectives, firemen, sheriffs, and probation officers to provide these functions, rather than to the strong right arm of its male members. The physical protection of the husband has become largely an anachronism in the modern city. The solitary man and woman can walk the city streets at any time of the day or night with comparatively little fear of annoyance or bodily harm. The chivalry of the old-fashioned male is slightly ridiculous under such circumstances.

Another significant change in the protective function of the family is apparent in the rapid increase in the facilities for caring for the feeble-minded and the mentally deranged. In former times, the family was almost the only asylum which these unfortunates had. Such institutions as existed a century ago were totally inadequate to care for the numbers of persons who required care. Furthermore, the care which they did provide was totally inadequate to the complex nature of the deficiencies and ailments. In the period from 1904 to 1929, the number of patients in the state hospitals for the insane throughout the country increased by 110%, at a time when the number of families was increasing only 67%. In the year 1930, there were 323,688 patients in the state hospitals, a total approximately equal to the number of patients in hospitals for all physical diseases. The number of feeble-minded and epileptic patients in state institutions increased by 45% in the seven years from 1922 to 1929 alone, during which period the number of families increased by only 15%.

The point in this connection is not that the percentage of feeble-minded or insane persons in the country is increasing at anything like these rapid rates, but rather that the facilities for their care are increasing. This burden is constantly being taken from the individual families and given over to the state and federal governments. Except in the rare cases of very wealthy families who are able to afford private quarters and private nurses for their mentally deranged or deficient relatives, most families are obviously not in a position to provide such care. The fact that the family formerly did so was a sign of weakness in the organization of society and did not reflect upon the glory or the integrity of the family. The care of such mental unfortunates is one function of which the family is well rid. Both the patients themselves and the normal members of the family benefit by such a delegation of function.

The change in the family facilities for caring for the aged and infirm parents and grandparents represents perhaps the most significant modification in the traditional protective function of this institution. As the family has become more an urban rather than a rural institution, the amount of care and protection which it can provide for the old people has declined. The sheer limitations of space are important considerations. The small urban apartment often has only one or two bedrooms, which are occupied by the parents and the children. The day of the old family spare bedroom is rapidly passing, for the average city family cannot afford to pay for a room which lies idle part of the time. As the family economy has changed from a production to a consumption organization, there is no place for the old people in the economic arrangements. There are no chores for grandmother and grandfather to do about the city apartment, which would serve the double purpose of helping the family economy and giving the old people a justification in their own eyes for living with their

children. The material way of life of the family has changed and the old people are perhaps the most tragic sufferers from this change.

The protective function formerly held by the family has been taken over by two general agencies—the private insurance companies and the various state and federal agencies of government. In the 30 years from 1899 to 1930, for example, the number of endowment policies in force among the private insurance companies increased by 800%. Such policies are taken out by men in the middle and upper income brackets in their most productive years as protection against their old age. Such an arrangement is satisfactory for those persons who can afford it, because it gives them complete independence in their old age both from their children and from the state. Unfortunately, the great majority of men and women are unable to make such private provision for their old age, no matter how hard they try. In a previous chapter, we pointed out that 87% of all families receive less than \$2,500 per year. It is virtually impossible to set aside enough money from such an income, over and above the expenses of raising a family, to provide for old age. It is not a question of thrift, for no matter how much most families save they will always be on the verge of insolvency. Only the 13% of the families with incomes over \$2,500 ever have the surplus available for such protective purposes.

In the year 1937, there were approximately 8 million persons in the United States over 65 years of age. Of this number, 65% were dependent upon the state, private charity, or their friends and families, while only 35% were independent. This situation may be graphically illustrated by the following table.

PERSONS OVER 65 YEARS OF AGE

A. Independent

	%
1. Living on current earnings	12
2. Living on savings	15
3. Living on various forms of pensions, both state and private, plus insurance annuities	8
	—
Total Independent	35

B. Dependent

1. Living on private or public agencies, including private charity, relief, public institutions, etc.	20
2. Living almost wholly dependent upon relatives or friends	45
	—
Total Dependent	65

The large proportion of these aged persons are completely dependent upon their friends or their families, neither of which have the funds or the facilities to provide adequate care. The exigencies of modern urban life are such that the average family cannot furnish protection for its aged members. A definite trend is apparent in which this function of protection is taken out of the hands of the family to an increasing degree. This trend is illustrated by the growth of old age assistance by the several states and by the federal government.

TRENDS IN OLD AGE ASSISTANCE

<i>Year</i>	<i>No. of Beneficiaries</i>	<i>Amt. Received</i>
1915	42	\$ 2,367
1925	817	145,557
1930	10,648	2,138,441
1935	408,502	65,001,665
1936	1,104,232	135,979,582
1937	1,582,144	310,872,850

The increase in the number of beneficiaries and in the amounts paid out between the years 1935 and 1936 resulted from the fact that federal funds under the Social Security Act first became available in 1936. The rapid growth in recent years of the state and federal contributions to the support of the aged indicates the extent to which this function has been taken from the family. It is only by the application of such governmental efforts that the problem of the aged will be solved.

Status Function

In the rural areas and small towns of the country, children are identified by the families in which they are born. The student who has spent his childhood in these areas will remember the number of times he has been addressed as "the little Jones boy" or his sister as "the little Brown girl" by older members of the community. In this way, the child is "placed" by the other persons and his status is determined in considerable extent by that of his family. In the rural areas, the family is comparatively stable and often lives in the same house for generations. Family customs develop which are a part of the heritage of each new generation. The definitions of the family determine in considerable measure the outlook of the child on the majority of the important concerns of his life. He learns that there are certain things which a member of his family will and will not do if they are to maintain their status in the community. This hereditary status of the rural or small town family is not necessarily an elevated one, nor does the concept apply solely to the leading families of the community. Each family has a status, from that which has always performed the odd jobs in the village to that of the leading banker. Each

child receives his status as part of his birthright and as long as he remains in the community it will always be with him.

In the urban areas, however, persons are treated as *individuals*, not as members of particular families. The function of the family of conferring status on its members does not operate in the large city with anything like the importance that it does in the small town. The sheer weight of numbers of persons in the metropolitan community militates against the possibility of identifying an individual on the basis of his family connections. The average urban family is too mobile to take roots in any community long enough to acquire a very definite status. The status of the individual family becomes a vague and amorphous thing when it is surrounded by a changing neighborhood composed of virtual strangers. Since the family often does not know its immediate neighbors, it is not constrained by gossip or by any similar force which controls the actions of the members of the family in the small town. Since the family has no status in the urban community, it follows that it cannot confer it upon its members. Except in the comparatively rare cases of great wealth or social position, the members of the urban family are left to sink or swim on their own qualifications as individuals. The city child is seldom identified by other persons as "the little Jones boy" when there are thousands of Jones families to pick from.

The process by which this function of the family is withering away cannot so readily be supported by figures as can the other declining functions. More subtle changes are taking place which can only be shown in an indirect manner. The growth of the attachment of the individual to institutions outside of the family, for example, indicates that the relative importance of this institution in conferring status is changing. Success in business, politics, civic work, or other fields of the complex life of the large city is important to the individual. He values approbation in these groups and institutions above the prestige of belonging to a certain family. If a man is successful in the business world and rises to be the head of a great bank or corporation, he often prides himself upon coming from a family which was completely obscure and could not possibly confer any previous status upon him. The democratic success story from farm boy to railroad president is itself an embodiment of this changing conception of the family. Such success is of course vouchsafed to few members of families, rural or urban. But the average boy and girl is forced more and more to face the world on his or her own merits and powers, without benefit of family status.

The concept of family status was based upon the subordination of the individual to the family. In the early days, such a subordination was considered only proper, particularly in the case of the women in the family. The wife was not considered to have any personality or any aim in life apart from the safety and solidarity of the family. She guarded the health

and the interests of her husband and children and did not dream of an individual life of her own. This role was one of the basic tenets of the patriarchal family and it is still maintained in millions of families. A significant change is going on, however, in the degree to which women are willing to accept such a complete subordination as was formerly demanded of them. Such a trend is the natural result of the economic independence of women and of the significant contribution which many married women are making to the support of the family. This growing individualization of women is also marked by an increase in her rights under the law—to control property, to make a will, and to choose her own domicile. As women continue to become individuals in their own right, the patriarchal solidarity of the family will inevitably undergo considerable change. This unity was one of the principal bases for the status which it conferred upon its members. As family unity is modified, family status will follow suit.²

Biological Function

We have considered the changing functions of the family as an economic, recreational, educational, religious, protective, and status-conferring institution. The family is gradually losing all of these functions, at least in the complete sense with which they were formerly performed by the colonial family. This loss of family function is a highly relative matter which varies from rural to urban areas and between the different religious and nationality groups in the country. Many families in isolated rural areas still carry on the traditional functions very much as they did a century ago. But the great majority have experienced at least some diminution in their traditional functions. In the face of this modification, how can we say that the family is still the basic social institution in our culture? How is it possible to justify the continuance of the family in its present form if it has lost so many of its former functions? The answer lies in the continuance of two of the basic functions which the family and the family alone can provide with any degree of personal and social adequacy. We refer to the biological and the affectional functions.

The family is still the only socially recognized institution for the birth and early education of children. While there is obviously nothing about the biological process of procreation, pregnancy, and birth which requires the marriage ceremony as a prerequisite, nevertheless the social tabus against illegitimacy are so strong that the family retains a virtual monopoly upon this function. The exceptions to this monopoly will be considered shortly, but for all practical purposes society demands that the bulk of its new generation be born and reared under the protecting cloak of

² In the discussion of these changing functions of the family, the writers are indebted to the data gathered and the points of view advanced by William F. Ogburn and Clark Tibbitts in *Recent Social Trends*, *op cit*, pp. 672-679.

the family. This solidarity of the family monopoly on child-bearing is enforced by many of the institutions which bring their influence solidly to bear upon the family. The state bases its whole elaborate mechanism of property inheritance upon children born in lawful wedlock, while the church is equally insistent that the necessary proprieties be observed before a child is brought into the world. The school does its part in inculcating prohibitions against the performance of the biological function without benefit of clergy. Finally, the whole force of public opinion is united in singing the praises of the child born in the family and in heaping opprobrium upon the child born outside the family. Upon this unsailable rock of public opinion, therefore, the biological function of the family is firmly rooted. No probable revolution of the mores can dislodge it.

If this procreative function is still retained by the family, it is also true that it is not performed as vigorously as it was in the days of the frontier family. In other words, the birth rate has declined very rapidly in recent years. The days of the large pioneer family have passed, particularly in urban areas and among native-born Americans. The rate has remained considerably higher in the rural areas as might be expected, for these sections of the country still retain the traditional family pattern to a considerable extent. This is not the place for an extended discussion of the falling birth rate or the wide variety of reasons for this phenomenon. We may, however, call attention to certain obvious changes in the biological function of the family as measured by the number of children per family which are annually brought into the world.

The crude birth rate is the number of births per year per 1,000 population. This figure is subject to considerable refinement and does not give a completely accurate picture of the situation, but it is accurate enough for our purpose. The most striking statistic in this connection is that the crude birth rate has declined from 55 per 1,000 in 1800 to 17.0 per 1,000 in 1937. In this single comparison, the change in the biological function of the family is graphically illustrated. The reasons for this change, ranging from the urbanization of the family, through the added economic burden of children, to the desire of many families for a higher standard of living at the expense of more children—need not concern us here. These factors are an integral part of the complex social changes which have taken place in the past century and which have modified every function which the family has traditionally performed. The dissemination of birth control information has played its part in this decline in the birth rate, as millions of persons have been moved by economic and social considerations to limit the size of their families.

The correspondingly rapid decline in the infant mortality rate in the past forty years has meant that a larger proportion of children are saved than ever before. The net change in the procreative function of the family

accordingly has not been so drastic as might be suggested from a consideration of the crude birth rates alone. However, the fact remains that the family no longer brings so many children into the world as it did in the days of our pioneer ancestors. The effects of this change upon the roles of the members of the family, particularly the mother, has been tremendous. Millions of women have been emancipated from the perpetual burden of unwanted pregnancy and child-bearing and have taken their places as individuals with possibilities other than procreation and housekeeping.

The decline in the birth rate has not been a uniform phenomenon. Considerable differences exist and will continue to exist between the various regions of the country and between various social classes. Families in the rural areas have been consistently more fertile than those in the large cities. The relative difference between the city and the farm family will in all probability decline in the future as the techniques of birth control are extended to this rural group. The rural rates have been higher in proportion than the urban rates. A considerable relative drop in the rural rates is to be expected. This does not mean, however, that the rural rate will in the future drop as far as the urban rate has already. The regional disparity will continue to exist for a considerable period as the rural family retains longer its traditional economic and social organization.

Differences in the birth rate also exist between various classes in the population. In the United States, we are all familiar with the alarmed views of those persons who see the upper economic classes failing to reproduce themselves and the lower economic classes rapidly increasing. Business men in the upper income brackets, professional men of all kinds, technical experts and the like have consistently small families, as opposed to common laborers, non-white collar workers, and other unskilled workers whose families run consistently larger. The process by which the techniques of birth control have been disseminated among the various classes has been such that the upper income groups and professional classes were the first to receive them. The lower income groups have been deprived of this knowledge by law and ignorance, with the result that their birth rate has been comparatively higher. We do not wish to enter the bitter and essentially fruitless controversy over the relative desirability of these social classes as the mothers and fathers of the coming generation. We wish only to point out that the changes in the biological function of the family have been more pronounced among some groups in the population than among others.

We suggested above that the family does not completely monopolize the biological functions of the family. There are a considerable number of children born every year without benefit of family. We may briefly examine the problem of illegitimacy as it bears upon the biological function of the family. Approximately two million children are born every year in the United States as a whole, although not all of these births occur in

the areas which report regularly to the Bureau of the Census. In the year 1937, there were 1,861,869 births in the registration area, of which 1,786,931 were legitimate and 74,938 illegitimate. This registration area includes all of the states except California, Massachusetts, South Dakota, and Texas and hence provides the nearest approximation we can get to the situation as a whole. The trends in illegitimacy can be seen by the changes in the rate per thousand births over the last few years. The rate of illegitimacy has risen from 31.9 per thousand live births in 1929 to 40.2 per thousand live births in 1938.³ This latter figure is the highest in history. Whether or not the trend of the depression years will continue is highly speculative. The mere fact that these years have shown such a high rate of illegitimacy is significant, however, in any consideration of the biological functions of the family.

The reasons for this increase are not completely clear, but undoubtedly result in considerable part from the economic stringency of the depression. The prolonged unemployment of these years made marriage difficult or impossible for many thousands of young couples who in normal times would have married and had legitimate children. Many of these couples had premarital sex relations which resulted in the birth of illegitimate children. In spite of the fact that the majority of these couples undoubtedly employed some form of contraceptive device, many of them were caught in unwedded parenthood by the logic of the biological process. We have no means of knowing how many of these couples would have married in the normal course of events and how many on the other hand were experimenting with various forms of the new "sex freedom." With the return of pre-depression business conditions, it is reasonable to assume that the marriage rate will go up and the legitimate birth rate will follow it. The illegitimate birth rate may go down under such circumstances and the trend of the past ten years will be reversed. At the present time, however, we can only say that the biological function of the family is not completely monopolized by that institution.

Affectional Function

The affectional function of the family covers a number of complex and important human relationships, which are necessary to men, women, and children if they are to develop as normal and socially adjusted human beings. This function includes the sex relationships between husband and wife as perhaps its most obvious manifestation. But it includes far more than that. The everyday contacts between the various members of the family which we discussed in a preceding chapter are integral parts of this function. The family in this capacity provides the close and intimate responses which are so necessary and desirable to the individual person-

³ Department of Commerce, *Bulletin of the Census Vital Statistics*, Special Reports, Volume 7, No. 2, p. 99 (Released March 24, 1939)

ality Sympathy and affection are important elements in these affectional relationships. Men and women are constituted both biologically and emotionally so that they function most completely together rather than alone

The way in which this affectional function is carried out determines in considerable measure the relative success of the modern family group This is in striking contrast to the organization of the family in colonial times, when the family performed so many utilitarian functions that the affectional did not loom as important. In most European countries and indeed among the majority of the peoples of the world, the family is an institution which is intended primarily to carry out the economic, religious, educational, protective, biological and status-conferring functions. The affectional function is relegated to a much less important position This is particularly true when this function takes the form of romantic love and affection between members of the family in our society The American family is increasingly dependent upon this form of affection, often in many of its more superficial forms, with the result that the romantic manifestations of affection between husband and wife take on an inordinate importance. Many persons consider that romantic love in this comparatively juvenile sense is the essence of the affectional function of the family But the true sympathy and affection of the mature family is far more fundamental and permanent than those aspects which are depicted in motion pictures and celebrated in popular songs.

The affectional function of the family contains many implications which are remote from the sentimental attitudes of romantic schoolgirls. Husband and wife care for one another in times of sickness, depression, and general uncertainty at what the next day will bring This affection may take such prosaic but important aspects as providing regular meals, regular hours of rest, and general solicitude for the physical welfare of the other members of the family. The results of this daily care are reflected in the fact that married men are on the average more healthy than single men, are less subject to nervous breakdowns and insanity, and are less prone to commit suicide. This does not imply that marriage is the panacea for all of the ills of the flesh and the spirit, or that marriage will solve all of the problems and perplexities of the modern world. It does suggest, however, that the affection of husband for wife and wife for husband will guard both against many of the mental and physical tribulations of a complex society. For many men and women the home is their only haven in the competitive hurly-burly of the modern world. Such a sanctuary will be increasingly important as the world increases in complexity.

The most important element in the function of any social institution is not the formal organization of that institution but the human relationships which go on within it. The family is no exception. The contacts of husband, wife, and children are the bases for its existence. Like the biological aspects of the family, however, the affectional can also be carried on out-

side the limits of the family structure. Many families fail to provide the affection which their members expect. Under such circumstances, many persons seek this affection outside of marriage. Men are traditionally the aggressors in such activities because of the greater freedom which they have always had. They may either seek out prostitutes whose role has placed them on a lower social level than the majority of their patrons, or they may carry on clandestine affairs with women of their own social class. The results of such extra-marital activities are disorganizing to the personality and often to the health of the persons concerned. The bulk of venereal disease is contracted and transmitted through extra-marital relationships and the relatively high rate of such diseases in this country indicates the extent of these contacts. Prostitution is the most important single source of venereal infections, which bring untold disorganization not only to the man but also to his innocent wife and children. With the birth of illegitimate children, the affectional function verges into the biological and the family is thereby deprived of two of its most important reasons for existence. Such physical promiscuity in search of affection is highly dangerous to all concerned either directly or indirectly.

The family is the institutional form which performs the affectional function with the maximum of efficiency and the minimum of personal disorganization. The future of the family as a social institution depends in considerable part upon the extent to which it continues to perform this indispensable function. The older traditional functions have been gradually relinquished to other and more efficient organizations. In spite of the increase in the illegitimate birth rate and the venereal disease rate, the family is still the only socially desirable institution to carry on the biological and affectional functions. The success of a family relationship is no longer the comparatively simple matter it formerly was when the family had a wide variety of reasons for existence. The intimate and personal relationships between men and women are exceedingly perishable. The future of the family rests in considerable part upon these delicate foundations.

CHAPTER 47

THE DISORGANIZATION OF THE FAMILY

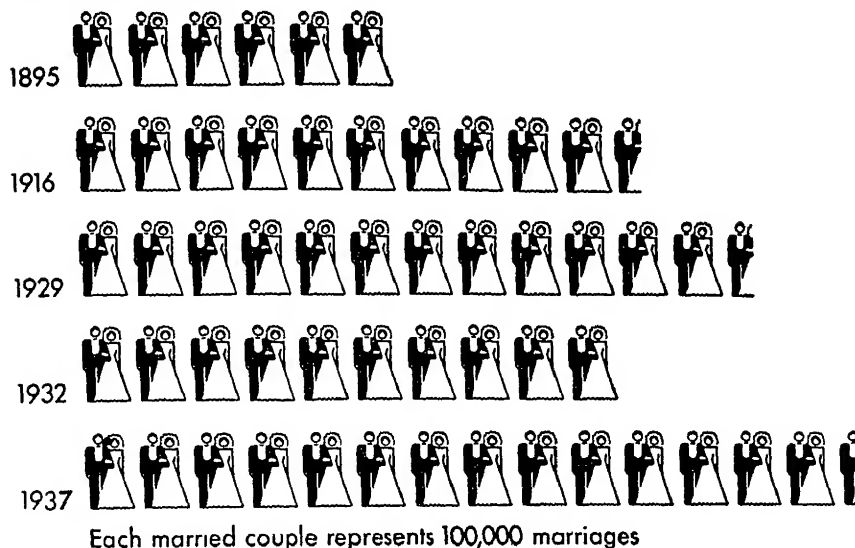
Recent Trends in Divorce

The decade of the 1920s was a period of great prosperity in the United States. It was also a period of social disorganization, when old institutions were changing and giving place to new. This change was particularly noticeable in the family, and many of the modifications in its functions discussed in previous chapters reached a high point in this period. Changes in the structure and function of the family which had long been under way were intensified during the post-war decade. The divorce rate increased at a rapid rate and alarmists began to predict the gradual disappearance of the family as a stable social institution. In the years when the stock market was reaching new high levels, the divorce rate also soared to dizzy heights until one out of every six marriages ended in the divorce courts. The year 1928 saw a total of 195,939 divorces, which was not only a sharp increase over the preceding year but the highest figure on record. In 1929, this number increased to 201,468 and the end was apparently not in sight.

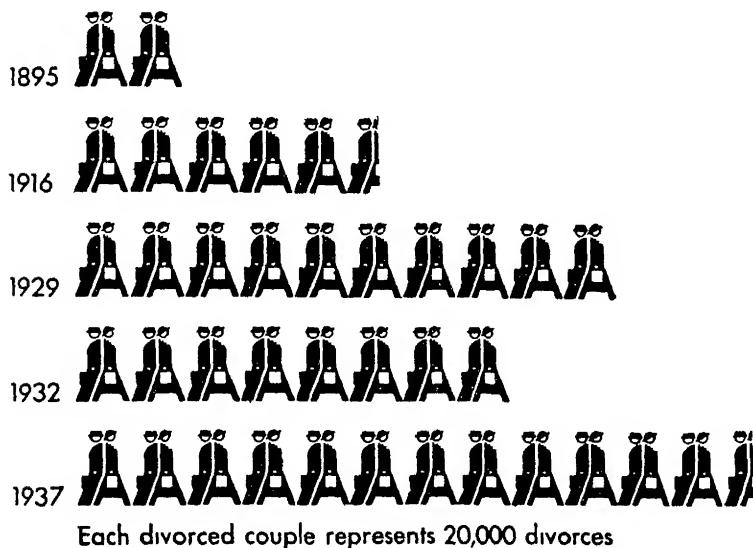
In the fall of 1929, however, came the collapse in the stock market and America settled into the great depression. The divorce rate began to decline at the same time, not as rapidly as the stock market, but with a gratifying regularity which was welcomed by many of those who had feared for the safety of the family. In the years 1930 and 1931, there was a noticeable decrease in the divorces granted both in terms of percentages of the population and in terms of absolute numbers. The figures for these two years were 191,391 and 183,664 respectively. The year 1932 marked the low point of business activity and is generally recognized as the bottom of the depression. This year also marked the low point of divorce in recent years, when 160,338 couples came to the formal parting of the ways. The business upturn which began in 1933 and continued with cyclical fluctuations for several years was accompanied by a corresponding increase in both the number and rate of divorces. In 1933 the absolute number was 165,000 with a rate of 1.31 per thousand population; in 1934 the number jumped to 204,000 and the rate to 1.61 per thousand population; in 1935, the figures were 218,000 and 1.71 per thousand; in 1936, 236,000 divorces were granted and the rate per thousand population was 1.84. In 1937, an all-time high divorce figure of 250,000 was estimated,

MARRIAGES AND DIVORCES

MARRIAGES



DIVORCES



[From Bernhard J. Stern, *The Family: Past and Present*, a publication of the Progressive Education Association (© Appleton-Century Company, Inc.) Pictograph Corporation]

with a correspondingly high rate of 193 per thousand population. The pendulum of family disorganization had swung back to surpass even the previous record rate for 1929.

These fluctuations in the divorce rate have raised a variety of conflicting hopes and fears in the minds of many persons interested in the fate of the family. In the early years of the depression, the sharp decline in the divorce rate was hopefully hailed as a definite sign of the rebirth of family stability in the face of the economic and social vicissitudes of the times. Men and women said that if the depression had done nothing else it had renewed the faith of the American people in the family. These hopes were rudely shattered, however, when the divorce rate began to climb with the revival of business activity after 1933. The gloom thickened as the rate continued to climb until it had reached an even higher figure than before the depression. The suspicion began to grow that the depression merely marked a temporary recession in the long-term trend of family disorganization. This trend indeed has been marked ever since 1887, when divorce figures were first kept by the Bureau of the Census, even though it did not become alarming until the decade of the 1920s. Present indications are that the end has not yet been reached.

DIVORCES IN THE UNITED STATES ¹

<i>Year</i>	<i>Number</i>	<i>Per 1,000 Population</i>
1887	27,919	0.47
1890	33,461	0.53
1900	55,751	0.73
1910	83,045	0.90
1920	170,505	1.60
1925	175,449	1.53
1928	195,939	1.63
1929	201,468	1.66
1930	191,591	1.56
1931	183,664	1.48
1932	160,338	1.29
1933	165,000	1.31
1934	204,000	1.61
1935	218,000	1.71
1936	236,000	1.84
1937	250,000	1.93

These figures indicate the steady increase in the divorce rate during the past fifty years. They suggest that the family has undergone drastic

¹ The figures up to and including 1932 have been taken from *Marriage and Divorce*, United States Department of Commerce, Bureau of Census (Washington, 1932), p. 12. The figures from 1932 through 1937 are estimates made by Samuel A. Stouffer and Lyle M. Spencer, "Recent Increases in Marriage and Divorce," *American Journal of Sociology*, 44:551-554 (January, 1939).

changes, whose repercussions are not yet finished. These figures are the raw materials on which this chapter is based. Our purpose is to examine the phenomenon of family disorganization with a view to finding out some of its basic causes, both real and legal, as well as the extent to which the family in all parts of the country and among all social classes has suffered disorganization. In a final chapter, we shall consider some of the efforts that are being made to reorganize this important social institution.

Divorce and Family Disorganization

Divorce is the effect and not the cause of family disorganization. This relationship is obvious when stated in this way, but there is a surprising amount of popular misconception on this score. Divorce is condemned as the most dangerous influence upon the family in the contemporary world and many persons speak of divorce as though it were a force which is bent upon destroying the integrity of the modern family. In reality, of course, divorce is nothing of the kind. It is merely the legal recognition of a state of family disorganization which is already present. Divorce does not "cause" family disorganization. Economic insufficiency, clashing temperaments, religious differences, interference of in-laws, differences in cultural background, disparities in social values, and many other factors combine to cause the disorganization of the family. Such fundamental difficulties in the way of harmonious family functioning are present long before the unhappy couple come near the divorce court. These difficulties cannot be made to disappear by changing the divorce laws, either in the direction of greater severity or greater laxity. They are far more firmly imbedded in the fabric of society.

We have pointed out that the family is a social institution which is intimately related to the other institutions in society. Changes in these institutions are communicated to the family, whose former organization is unable to cope with the new conditions. Many of the changing functions of the family have the effect of reducing its cohesive power in the modern world. The changing role of the woman as a wage earner has modified her attitude toward the family and has made her less willing to submit to the unconditional domination of the husband. The modification of the religious functions of the family has made that institution less subject to the authority of the church in matters of marriage and divorce. Marriage is considered a civil contract which can be rendered null and void by going through the necessary legal formalities. Such an attitude is in striking contrast to the former concept of marriage as a religious sacrament, which can be broken only by death. The effects of the changes in many of the other functions are not so direct as the economic and religious changes in bringing about the dissolution of the family. The loss of so many of these important reasons for existence renders family solidarity more precarious than before. When the affectional function of the family breaks down,

there are not so many elements as there were to keep the family together

The stability of the family has furthermore become increasingly threatened by the philosophy of individual happiness which has increased during the years following the World War. In former times, marriage was not considered primarily as an agency for promoting the happiness of the individual partners but rather as a social institution which should be preserved and perpetuated for its own sake. Men and women were willing to sacrifice their own egoistic satisfaction for the sake of the security of the institution and the children which were its product. So complete was the acceptance of the sanctity of the patriarchal family that many persons never considered that they had any individuality apart from it. This is particularly true of the women, whose loyalty was oriented about the family rather than about their own individual happiness. The changes in the family have taken the form of substituting individual for family considerations, of defining matters in terms of an "I" attitude rather than in terms of a "We" attitude. This substitution has been the result of the social forces which have made the individual look to his own interests before those of his family. This individualism is by no means universal throughout the country nor is it found uniformly among all classes of the population. The majority of families are integrated about a solid affection and belief in the stability of their particular group. A significant and growing number of persons, however, is defining the social situation in a different way. The result is an increase in the number of families broken by divorce.

This situation is produced both by the changing conception of the family and by the changing conception of divorce as a social problem. Marriage is regarded with a more critical attitude than formerly, when it was accepted as the natural and normal state of adult men and women. Under present urban conditions, however, it has become increasingly easy for the individual man or woman to make a successful social adjustment without marriage. Many of the necessary social functions which were formerly provided only by the family are now provided by other institutions which are equally accessible to single persons. It is no longer necessary to marry in order to receive many of the economic, educational, affectional, and other advantages formerly conferred by the family alone. Many persons accordingly enter marriage with the attitude that this relationship must give them something definite which they cannot receive elsewhere. The affectional aspects of the family take on added significance under such circumstances. An individual marriage must clearly promote the collective physical and mental well-being or it may be considered a failure by either or both of the partners. Many persons are unwilling to make the effort which is necessary for any marriage relationship to be successful. Divorce is often the result of this failure.

The relationships of men and women in marriage are exceedingly complex. Each person comes into the family with his or her personality already developed in accordance with his own peculiar hereditary and environmental history. Individual attitudes on matters of belief and conduct may differ widely between the husband and wife. Temperamental differences exist which often make it difficult for the two persons to adjust themselves to the daily routine of marriage. Such difficulties in personal relationships are often intensified by economic and social factors which are completely beyond the abilities of the family to control. Unemployment often produces tensions in the family or augments tensions which are already present. Disagreements about financial expenditures come about not only from temperamental differences between husband and wife but also from different ideas about socially desirable expenditures. Attempts to "keep up with the Joneses" embitter many family relationships by introducing competitive social standards and giving husband and wife an inflated scale of values. The factors which bring about the disorganization of the family are thus very complicated and reflect the contradictions of our society as a whole. In the following pages, we shall outline these factors very briefly, bearing in mind that the cause for the disorganization of any particular family is usually a combination of factors rather than a single one. The relationships between two people can rarely be catalogued under a single heading.

The causes of family disorganization may be considered under two general headings, which we shall call the *personal* and the *social*. The *personal* factors are those elements in family tensions which grow out of the personalities of the husband and wife. Included in this general category are differences in temperaments, divergencies in philosophy of life, annoying personal habits, difficulties in sexual adjustment, and different attitudes toward the family relationship. *Social* factors leading to family disorganization, on the other hand, are those elements which are not directly related to the personality of either member of the family but instead influence the relationship from without. Under this category, we may list various economic factors, such as unemployment, difficulties in adjusting to a particular job, and the economic independence of the wife. Differences in the background of the marriage partners are also included, as are differences in age and social status. Finally ill-health and the meddling of in-laws are important social causes for family tensions. The personal and the social factors clearly merge into one another in many individual instances, so that it is impossible to distinguish between them with complete accuracy. Both types of causes ultimately reflect upon the personal relationships of the family in such a way as to bring it to the parting of the ways. With these limitations in mind, we may consider the specific factors which produce family tensions.

Personal Factors

(1) *Temperamental Difficulties*.—Temperament is a difficult word to define, but for our purposes it may be considered as the combination of personal characteristics which determine the individual's reaction to a situation involving his emotions. These temperamental patterns appear to be inborn in the individual and determine the rapidity and extent to which he will react emotionally to different situations. As a result, some people are easily angered over trifles and others are slow to anger in similar situations. Some people are by nature quiet and shy while others are temperamentally jolly and gregarious. These temperamental patterns, however we may define them, determine in considerable part the extent to which a given couple will get along in marriage. If the husband, for example, is extremely fond of people, of going out every night, and the wife is the sort of person who hates parties and likes nothing better than an evening at home with a good book—such a couple clearly has a marked difference in temperament which may interfere seriously with their marriage. Persons who are slow to anger are often unable to understand how their husbands or wives may fly into a rage at what seems to be such a trifling matter. On the other hand, these choleric persons get over their anger very quickly and often never understand the cold, slow-mounting fury of the other temperament which nurses a grudge for days and weeks at a time. This does not imply that two persons of the *same* temperament necessarily make any better adjustment in marriage than persons of strikingly opposite temperaments. In many cases, if husband and wife are too much alike in temperament they may fight constantly over unimportant matters with the result that their married life is a series of emotional crises. Difficulties in such emotional adjustment may generate deep-seated family tensions which contribute to the maladjustment of marital relations.

(2) *Behavior Patterns*.—Temperamental difficulties in marriage are in a large part the result of inborn differences in human reactions. Behavior patterns, on the other hand, represent differences which are acquired by the individual in the course of his development prior to his marriage. He may learn these irritating habits from his own family in his infancy so that they have become an intimate and indelible part of his adult personality. Such behavior patterns range all the way from annoying table manners to matters which vitally affect the welfare and happiness of the family. Many such habits and mannerisms are comparatively unimportant and serve only as minor annoyances in an otherwise happy family. Picking one's teeth at the table, for example, may be very disconcerting to the wife who has been reared differently, but she does not usually file suit for divorce on these grounds. More serious difficulties may arise about such matters as the husband's treatment of the wife before company, his atti-

tude toward her best friends, or his refusal to let her have any voice in the family budget. A man who has been brought up in a family in which the husband was the undisputed lord of all he surveyed has his own behavior influenced by such an example. He might grow up to be domineering and expect his wife meekly to acquiesce. He might on the other hand have his own spirit so completely broken by his father that he would be exceedingly meek in his own family. In any case, a man so conditioned might have difficulty in adjusting his own behavior patterns to those of a wife who had been brought up under an entirely different set of family expectations. Behavior patterns are formed by the contacts of the individual with his social environment and theoretically may be changed by later experience in the family. In actual fact, however, such patterns in the adult are almost as difficult to change as the temperamental pattern with which the individual is endowed at birth. Many women who have married men to reform them have learned this to their sorrow.

(3) *Social Values*—Social values mean those things which the person considers important, which he would defend with all his might rather than give up or compromise. Every person has his own social values upon which he bases his fundamental actions and which constitute his philosophy of life. In view of the importance with which the majority of persons hold on to their basic social values in the face of change and adversity, it is desirable that the married couple be substantially in accord on such matters. Among the basic social values are the individual's religious faith, his sexual ethics, his conceptions of honesty and justice, his attitude toward his own life work, his feelings about children, and similar matters. These are considerations which the average person does not take lightly. He desires substantial accord on them with his wife. If a couple have such an accord on social values, if they consider the same things important and the same things unimportant, the family can surmount many temperamental differences and divergencies in behavior patterns. But when this agreement is lacking on the fundamental issues of their lives, when they cannot agree on the importance of particular social values, family disorganization of some sort has become a definite possibility. Many families continue to stay together under such circumstances, some for religious reasons, others for financial reasons, and still others for the sake of the children. But in any case the basic harmony has been broken. The family is not an organization which gives each member the sympathy and cooperation which are so necessary to complete individual development.

(4) *Affectional Relationships*—These relationships include not only the sexual contacts between husband and wife but also the intimate expressions of affection which are so important a part of the marital bond. In the current emphasis upon sexual incompatibility in marriage, students of the family have underestimated the secondary demonstrations of affec-

tion which are only remotely related to sex as it is generally understood, but which are nevertheless indispensable to a complete emotional life in marriage. The role of sexual incompatibility in family tensions should not, on the other hand, be neglected. Mutual satisfaction of the sexual drives is an important corollary to a successful family life, and the absence of such satisfaction is an equally important factor in the failure of the family. Difficulties on sexual matters arise from at least three sources: *one*, ignorance or improper instruction in the physiology and biology of sex on the part of one or both members of the family; *two*, the tradition that respectable women should have no sexual feelings and should consider the performance of the sexual function merely as an unpleasant duty; *three*, the jealousy which arises when one of the partners is physically unfaithful to the other. Such sexual factors may exist singly or in combination to bring about deep-seated tensions between husbands and wives, of the nature and extent of which they may only be imperfectly aware. If such direct sexual tensions are combined with difficulties in the simple affectionate relationships between husband and wife, the family has lost one of its most important reasons for existence. Family disorganization may follow from this general source, even though such difficulties are seldom mentioned in a divorce court.

(5) *Marital Roles*—An important aspect of any social institution are the roles which the various members play toward one another. Many of the most important relationships in the family are based upon the reciprocal roles which the husband and the wife play in their daily contact. These roles are learned by the man and woman early in life and are often retained in the adult relationship of marriage. A basic conflict in these roles may prevent the marriage from functioning with anything like its proper efficiency. To illustrate: if a girl has been brought up by an adoring father to act as a spoiled baby in her childhood and youth, it is difficult to change her role when she marries and assumes adult responsibilities in her own home. The husband may have wished for a wife who would be a helper, a guide, and a comfort to him and who would act as a grown-up person in marriage. The wife may be completely unable to adjust herself to this changed role and may earn her husband's disgust by continuing to play the petulant baby who is spoiled by the males in the family. On the other hand, the man may have been the apple of an adoring mother's eye. She may have devoted her life to making the world safe for her beloved son. The adjustment which a man with such a family role must make in marriage is sometimes so difficult that he continues to demand the same attention from his wife that he received from his mother. These family roles have been defined as "the organization of habits and attitudes of the individual appropriate to a given position in a system of social relationships." The habits and attitudes appropriate to the early family life of the husband or wife may be highly inappropriate

to the changed situation in their own family. The majority of persons make such necessary adjustments in marriage with little difficulty and modify their roles to fit the new situation. But when the husband or wife is unable or unwilling to make such an adjustment, the equilibrium of the marriage is seriously threatened.

Social Factors

(1) *Economic Tensions*—We have seen how the traditional economic role of the family has undergone drastic modifications in the course of the past century. These modifications have been reflected in the most intimate framework of the family pattern, with the result that tensions have arisen which never existed before. When the family was a cooperative economic enterprise in which every member had a well-defined part to play, few difficulties arose over such questions as the nature of the husband's job, whether or not the wife should work outside of the home, or how much the family should spend on luxuries and necessities. The complex society in which the family now operates has changed this former unanimity and has substituted in its place a number of potential economic tensions. We shall discuss several of these sources of tension very briefly.

In a previous chapter, we considered some of the effects of the employment of women upon the economic and social functions of the family. These functions undergo certain changes when the wife is away from the home, no matter what the size of her earnings may be. The difficulty here arises out of the attitude of the husband, who may consider that his wife's employment is a sign of his own inadequacy to fulfill the traditional male role of sole support of the family. Such an attitude is not found as frequently today as it was a generation ago when the number of women in business, industry, and the professions was relatively smaller. Nevertheless, in many individual marriages, the husband may nurse a smoldering resentment at his wife's employment, which may be unknown to her and even to himself. This unspoken resentment may generate a number of secondary and related tensions in the family relationship.

The situation in which many modern women find themselves after marriage of being completely dependent upon their husband is also a cause for many family tensions. This applies particularly to those millions of women who have been employed prior to their marriage and who have tasted the joys of an independent income. In many cases, they were making more money than their husbands at the time of marriage. The necessary reduction in their scale of living after marriage may be very irritating to them. An added complication is that women who have supported themselves before marriage may be unwilling to adjust either to the family routine or to their husband's idiosyncrasies to the extent necessary for a successful marriage. Their confidence in their ability to support themselves may make them more willing to terminate their marriages

and go back to their old jobs. The absence of economic necessity has unquestionably added to the divorce rate, whatever other effects it may have had on the family.

When men are unhappy in their work, when they feel that they are wasting their days and years at uncongenial and unproductive occupations, the results will often be apparent in their family relationships. Many men are continually shifting occupations in a vain effort to find something which they will enjoy and which they will consider adequate to their abilities. Others may work at occupations which keep them away from home for long periods and render their lives highly mobile. Actors and traveling salesmen fall into this category and it is no accident that the divorce rate among them is proportionately high. The nature of the man's occupation is an important index to his entire way of life, both in point of his own satisfaction and the opinion which other persons have of him. The adjustment or lack of adjustment of the individual to his family may in part be a reflection of his occupational status. It is difficult for a man who is bitterly unhappy in his work to be a good husband or a good father at all times.

The tensions which are generated in the family because of occupational difficulties are not so important, however, as those which arise from the husband's failure to find any work at all. The world of the family revolves about the job, and when that job has gone, the world stops going round. The majority of families have such small savings that they can not survive a long period of unemployment without applying for some sort of relief. Their purchasing power is seriously curtailed during the period of unemployment, for in almost every case the relief grants are less than the wages of the husband. But the calamity entails much more than the loss of purchasing power. It involves the most intimate relationships of the family, the attitude of the mother and the children toward the husband and his attitude toward himself. The tradition of economic self-sufficiency is so strong in this country that unemployment still implies a definite personal inadequacy. This traditional attitude has not been eradicated even after the years of the depression, when millions of men were unable to find work of any kind, no matter how hard they tried. The wife may be as compassionate as possible, but it is often difficult for her to refrain from criticism of her husband when he returns day after day from a fruitless search for work. Tensions of many kinds may spring up about unspoken but implied inadequacy. The man may develop the same attitude toward himself—that he is no good, that it is his own fault, that he is a failure—and this attitude may color his entire outlook. Unemployment deprives the family of many of the material necessities which form the basis of successful family life. It also deprives them of the mental solidarity which is even more necessary to such a relationship.

(2) *Cultural Differences*.—When the husband and the wife come from

different cultural backgrounds, the adjustment in marriage is rendered more difficult. Cultural differences may include differences in religion, nationality, or social class. Such disparities may not in themselves constitute an insurmountable barrier to successful marriage, but they often increase the number and severity of the adjustments and compromises which must be made if the marriage is to function effectively. There are wide differences in these matters in our own society, and the freedom with which persons of different religions, nationalities, and class backgrounds marry undoubtedly contributes in part to the high divorce rate. The ease with which a couple can ignore these differences in entering marriage is one of the glories of a democratic society. It is also one of the factors which add to the instability of these marriages. In societies where marriage between different classes is strictly forbidden, there is undoubtedly a great deal of unhappiness from blighted romances. The chances of such arranged marriages succeeding, however, is greater because of the similarity of individual backgrounds. Social and cultural differences are not supposed to exist in our democratic society and love alone is popularly considered to be the sole criterion for a happy and successful marriage. A marriage in the face of cultural differences may be high adventure and pure romance, but it is much more difficult to maintain. Religious attitudes, nationality traditions and standards, and class values form some of the most important aspects of our personality. The greater these differences may be, the more difficult it is to harmonize them in marriage. Failure to bring about this cultural harmony may render the marriage itself unstable.

(3) *Age Differences* —There is no ideal age for marriage nor is there any ideal relationship between the ages of husband and wife. Nevertheless, it is clear that a marriage in which a great disparity in age exists between husband and wife presents certain difficulties. In the patriarchal family system, it was traditional for the husband to be several years older than the wife. The role of the latter was that of subservient homemaker who was not called upon to play a responsible part in the outside affairs of the family. Contemporary studies of the age of marriage suggest that those relationships in which the husband was four or five years older than the wife have been comparatively more successful, other factors being equal. When the age disparity is as great as a generation, there is always the possibility that the attitudes and standards of the couple may be so different as to preclude a completely happy adjustment. The interests of a girl of 18 differ widely from those of a man of 40, even though the two may make every effort to adjust to one another. These differences may be physiological to a certain extent, for youth and middle age have a different amount of vitality which results in different tastes and values. The marital complications of age disparity are often augmented when the wife is markedly older than the husband. Tensions may arise in such instances when the wife grows older more rapidly than the husband, who may look at younger women. Age

tensions are not a numerically important factor in family disorganization, but in cases where they exist they may render a satisfactory adjustment more difficult.

(4) *Ill Health*—The chronic ill health of one of the members of the family may serve as a constant source of tension, even though neither the husband nor the wife will admit its true nature. There are of course many instances of the opposite situation, when a husband or wife lavishes the greatest tenderness upon the spouse through long years of severe illness. Such conditions imply a high degree of devotion and self-sacrifice on both sides. In many instances, the constant strain on both the nerves and the pocketbook which is attendant upon a long illness may be irritating to the healthy member of the family and humiliating to the invalid. On the other hand, a considerable amount of ill health in marriage is the result of other tensions which may take this form. Many wives who are chronically unhappy for a variety of reasons may experience symptoms of ill health and nervousness which are largely mental in their origin. The wife is often unconscious of the causes of her ailments and may adopt the role of chronic invalid as a method of gaining the attention she would otherwise not receive. Such a role may be temporarily rewarded by the increased solicitude of the husband, but in the long run his irritation may increase and add to the tensions which originally brought about the nervous condition. Many cases of "nervous breakdown" today may be traced to such a combination of factors. Whether real or imaginary, however, such ills produce tensions which disrupt the harmonious functioning of the family.

(5) *Interference of In-laws*.—Among certain primitive peoples, there exists a strong "mother-in-law taboo" which prohibits a son-in-law and his mother-in-law from having anything to do with one another under any circumstances. These primitives manifest a keen insight into one of the most thorny problems of marital relationship, whether in the wilds of equatorial Africa or in contemporary Middletown. Parents naturally have a deep affection for their children which makes it difficult to stand aside and see them in difficulty. This attitude often takes the form of direct interference of the parents with the marital affairs of their son or daughter. The fact that this interference is often carried on with the best of intentions does not make it any less difficult for the son-in-law or daughter-in-law, who naturally resents such interference with his or her personal affairs. It is difficult for doting mothers to accept a marriage in which their son or daughter is not receiving proper care and attention. A mother may believe that her daughter-in-law is not cooperating with her husband in the proper manner to further his career. The suggestions of the mother are often received with direct or veiled hostility by the daughter-in-law. Similar differences of opinion may exist between sons-in-law and their mothers-in-law which may bring about considerable tension in the family. When members of the older generation are forced to live with their children,

these tensions are augmented and the family may relapse into a state of armed aggression. This does not imply that every such situation is productive of serious family tensions for in many instances the whole family is sufficiently intelligent to make the necessary adjustments. But the very nature of the in-law relationships makes them among the most difficult in human society.²

Grounds for Divorce

We have considered some of the tensions which bring about the disorganization of the family. Certain of these factors may conceivably act as single causes for the breakdown of family relationships, but the majority occur as the result of a combination of tensions. In the complex society of our day, situations arise which generate tensions to a much greater degree than in the simpler society of an earlier day. The majority of families are disorganized by the various tensions outlined above. But these are not the factors which serve as the legal grounds for severing family relationships. The law does not recognize the majority of the real causes for family disorganization and when the break actually occurs, various legal subterfuges and circumlocutions must be resorted to. The student of family disorganization would get a totally unreal picture of the situation if he relied solely upon the statistics of the legal grounds for divorce. For a complete picture of the disorganization of the family, it is necessary to know both the *legal* and the *real* causes. We have suggested the most important of the *real* causes. We may proceed to a discussion of the *legal* causes.

In order of frequency the legal causes may be summarized as follows.³

<i>Causes</i>	<i>Per cent</i>
1. Cruelty	42.4
2. Desertion	27.9
3. Miscellaneous causes	8.6
4. Combination of causes	8.0
5. Adultery	7.5
6. Neglect to provide	4.1
7. Drunkenness	1.5
	<hr/>
	100.00

Cruelty and desertion together make up more than two-thirds of the total legal causes for divorce. The other factors are comparatively unimportant in the composite picture, although certain specialized grounds rank

² In the discussion of family tensions, the writers have drawn freely upon the treatment in Mabel A. Elliott and Francis E. Merrill, *Social Disorganization* (Harper and Brothers, New York, 1934), Chapter XXI, "Family Tensions."

³ Bureau of the Census, *Marriage and Divorce, 1931*, Washington, 1932, pp. 20-21. Figures for 1931 are given above, since they are the last available. The Bureau of the Census stopped reporting divorce figures after 1931.

high in certain states. The divorce picture as a whole is very chaotic, because of the wide variety of grounds allowed under the different state laws. South Carolina, for example, does not allow divorce on any grounds whatever. In New York and the District of Columbia, adultery is the sole ground. The other grounds are variously interpreted in the different states, with considerable difference of legal opinion and application as a result. One act may be ground for divorce in one state and not in the next. Residence requirements are also subject to wide variations between the states, ranging from the six weeks necessary in Nevada to periods of several months or years in other states. A couple may still be married under the statutes of one state and may be divorced legally in another state. There have been several attempts to introduce a uniform divorce law in Congress but these efforts have not been successful. We may analyze briefly the most important legal grounds for divorce.

(1) *Cruelty*.—Almost half of the total number of divorces are granted on the grounds of cruelty. The reason for the extreme popularity of this ground is the fact that it covers a multitude of marital sins, ranging all the way from abusive language to physical beating. Among the variety of definitions of cruelty among the various states are: "cruel and inhuman treatment," "extreme cruelty," "intolerable cruelty," and "mental cruelty." The last is perhaps the most flexible of all grounds, since by definition the cruelty is "mental" and hence need have no physical expression. Several states allow divorce on that ground alone. Cruelty is defined in general terms as "any conduct which may injure the life or health of the individual and render further cohabitation unsafe." This may include such varied forms of injurious conduct as physical maltreatment which endangers the life or limb of the partner, the infection of the husband and wife with a venereal disease which was presumably contracted in extra-marital relationships, and even in some cases the consistent refusal of one partner to have sexual intercourse with the other. In cases where both partners have been clearly cruel and ill-tempered to one another, the divorce has usually been refused, on the ground that husband and wife were equally guilty and that neither had any legal reason to complain of the other's conduct. In the majority of cases, cruelty must be carried on before witnesses and the unsupported word of the husband or wife is insufficient. A considerable part of the cruelty alleged in such suits is merely formal evidence offered for divorce and may or may not have actually occurred. Even when cruelty has actually been inflicted upon husband or wife, it is in large part the expression of numerous other tensions which are not considered legal causes for divorce in any court in the land.

(2) *Desertion*.—This is the second most important legal cause for divorce. It is also subject to considerable latitude of definition between the various states. In general, desertion may be defined as "the willful and voluntary separation of one party from the other without justification or

the other's consent, and with no intention of returning to the domestic hearth." Such desertion may be either spurious or genuine. Spurious desertion takes place by agreement of the couple concerned and exists merely for satisfying the requirements of the law. Genuine desertion exists in a large number of cases where the husband actually deserts the wife either for a long interval or permanently, during which time she has no idea of his whereabouts. It is impossible to determine from the figures the number of divorces granted on the basis of these two aspects of desertion.

This method of family separation is important in another connection, however, for a large and undetermined number of homes are broken annually by desertion which never takes the form of divorce. Many thousands of wives are deserted by their husbands and never see them again, but for religious or other reasons these women never get divorces. They continue to live in the anomalous situation of neither wife nor widow, unable to marry again for fear of committing bigamy. This form of family breakdown is relatively more common among the lower economic groups, so that desertion is often called "the poor man's divorce." All of the states except South Carolina and New York allow divorce on the ground of desertion, although the time interval which is legally required before desertion can be considered valid varies from a few months to several years.

(3) *Miscellaneous Causes*.—This heading is listed as the third most important cause for divorce. It includes a variety of factors, each of them comparatively unimportant numerically but together making up more than 8% of the total divorces. Miscellaneous causes include such items as bigamy, conviction of crime, fraud, duress, mistake, impotency, insanity, venereal disease, and "discretionary" causes. In the latter the judge can use his own discretion as to whether just grounds for divorce exist. The majority of these miscellaneous causes are allowable in only a few states, although such a factor as conviction and imprisonment for a felony constitutes sufficient grounds in a large number of states. The important consideration, however, is the fact that the average couple is largely at the mercy of the laws of the state in which the partners live. A woman may be a very real sufferer from one of these causes and have a legitimate ground for divorce from the point of view of common sense. But if the laws of her state do not allow divorce on this particular ground, she must either continue to put up with the marriage or perjure herself by getting the divorce on some legally acceptable ground. Most couples are not in a position to move to another state to get a divorce. This is a privilege largely confined to the upper middle classes who can go to Reno. Indeed, a careful study has shown that only 3% of all divorces are gained by persons going to another state for the purpose.

(4) *Combination of Causes*.—This includes not only the above-mentioned "miscellaneous causes" but also such factors as cruelty, desertion, drunken-

ness, and the rest of the single causes for divorce. Eight per cent of all divorces are granted on such mixed grounds, which actually gives a more realistic picture of the situation in many cases than unitary legal causes. A divorce decree on the basis of a combination of causes at least recognizes the obvious fact that the sources of family disorganization are complex and cannot be included under a single category. The personal and social elements which bring about the final rupture of the family can rarely be catalogued in any simple fashion.

(5) *Adultery*.—Adultery may be defined as “voluntary sexual intercourse of a married man or woman with a person other than the offender’s wife or husband.” It is perhaps the most widely recognized ground for divorce, insofar as the great majority of states recognize it as such. The percentage of divorces granted on the ground of adultery, however, provides little real indication of the amount of this practice in the country as a whole. In the first place, a large number of the actual instances of adultery never come to the attention of the husband or the wife concerned. In the second place, many instances which do become known to the spouse are never brought into the divorce court. In the third place, many couples in which known adultery has been committed will sue for divorce on other grounds. Adultery usually implies a scandal and many couples prefer more ambiguous but less morally damaging grounds of cruelty and desertion. Finally, many of the divorces which are granted on the ground of adultery have been brought into court in New York state, where this is the only possible ground. Many New York couples go through the legal formality of swearing that the other committed adultery and produce the legal grounds for this accusation, even when everyone concerned knows that the charges are untrue. This situation is the cause for the most flagrant instances of collusion in order to carry out the legal formalities necessary for a divorce. We shall consider this phenomenon of collusion in more detail below, inasmuch as it plays such an important role in a large number of divorce actions.

(6) *Neglect to Provide*.—This is often called non-support and entails the willful and deliberate refusal of the husband to support his wife, even though he may have the necessary means to do so. The division of labor which has traditionally existed between the sexes makes it obligatory for the husband to support his wife as long as he is able. If he refuses to carry out this obligation for an extended period, the wife may bring suit against him. This cause does not apply when the husband has been ill or has otherwise been physically incapacitated to such an extent that he cannot earn his living. If the wife is able to support herself either through independent financial means or otherwise, she cannot sue her husband on these grounds.

(7) *Drunkenness*.—This is the last independent ground for divorce listed by the Bureau of the Census. Only 1.5% of the total divorces

in 1931 were granted on this ground, which is generally included in the statute as "habitual drunkenness." This condition is variously defined by the courts, with some requiring the drunkenness to be habitual for a year or more before the spouse may file suit. Under certain conditions, periodic heavy drinking may be considered legitimate grounds, while in other states such debauches may not be so considered. The figures given for the number of divorces granted on this ground probably do not adequately represent the number of marriages throughout the country which are actually broken by drink. Many husbands and wives are unwilling to bring suit on this ground, inasmuch as their testimony may be injurious to the professional or business standing of the husband or the moral reputation of the wife. Many of the divorces granted on the grounds of "cruelty" or "desertion" undoubtedly were brought on in large part through habitual over-indulgence in strong drink.

Characteristics of Divorce

There is thus a great difference between the legal causes of divorce and the actual combination of family tensions which bring about the disorganization of the family. The law is a formal and mechanical mechanism for judging family disputes and cannot adjust to the individual problems presented by each disorganized family. The law perforce must recognize certain definite acts of omission or commission as the sole grounds for divorce and cannot consider the complex attitudes of the couple involved. The law will not formally admit that any given couple has come to the parting of the ways and has agreed to an amicable divorce on the sole grounds that they are manifestly unsuited to one another. A large proportion of the divorces granted have actually been preceded by such a friendly discussion and informal agreement. The law refuses to admit such a pact, however, and if any hint is officially introduced in court of the existence of such an agreement, the divorce is immediately thrown out on the grounds of "collusion." This term means that the defendant in the suit has agreed to let the divorce action succeed without contesting it or trying to disprove the facts brought forward by the plaintiff. In a recent year, 84% of all the divorces in the United States were undefended, which would imply that the majority of defendants had agreed to be divorced before the action was taken. Nevertheless, the courts do not recognize such a situation and the persons concerned are forced to produce perjured evidence or trumped-up charges of the alleged misconduct of the other party. Everyone who is a party to the proceedings, including the judge, is aware that perjury is being committed by all concerned. But the suit is allowed to go on and the divorce is granted.

America is traditionally assumed to have no social classes in the old-world sense of the term. This democratic belief has been seriously challenged in recent years by the increasing economic stratification of the

population. For purposes of divorce classification, social classes do exist. The population as a whole exhibits certain well-defined social gradations in the matter of divorce, with some occupational groups having consistently higher rates than others. Certain activities tend to produce more family tensions than others, which may eventuate in divorce. Occupations involving a high degree of mobility, such as those of actors and traveling salesmen, seem to generate an abnormally large number of family tensions. Occupations which bring the spouse into close and intimate contact with persons of the opposite sex tend to produce family tensions and domestic frictions. Physicians, barbers, hair-dressers, and domestic servants have little in common with one another except for the fact that they all come in frequent contact with the opposite sex and have unusually high divorce rates. Such occupations as farmer and farm worker, ordinary laborer, mechanic, and the like are not as gregarious as the above-mentioned and have lower divorce rates. It is true that there are other factors present than merely the nature of the occupation and the types of contacts that it brings about. Nevertheless, these differences are significant in determining the extent of divorce among the various classes.

Studies of college graduates, on the other hand, indicate that these classes have a very low divorce rate on the whole. This applies to the graduates of men's and women's colleges and to co-educational institutions as well. Evidence from these and other sources tends to support the following generalization concerning the class differences in divorce. that divorce is relatively low both among the lowest and the highest social classes and that it is relatively high among the great amorphous group known as the "middle class." There are thousands of different occupations making up this middle class and together they constitute the largest proportion of the country. As a class, they apparently lack the religious ties which render the family indissoluble on the one hand and the social and economic security which makes it stable on the other. The middle class is the class in which the family has lost the majority of its traditional functions. Nothing has arisen in place of these functions to maintain the stability of the family.

Closely related to the problem of class differences in the divorce rate is that of differences between the various regions of the United States. These differences are very striking, particularly in view of the homogeneity of the population in terms of many other social characteristics. These regional differences in the divorce rate range all the way from 14 per 10,000 married persons in the Middle Atlantic states to 70 per 10,000 in the mountain states of the Far West. This divergence may be seen from the following condensed table: ⁴

⁴ Adapted from William F. Ogburn and Clark Tibbitts, "The Family and its Functions," *Recent Social Trends*, *op cit*, p. 693.

<i>Region</i>	<i>Divorce Rate per 10,000 Married Persons</i>
1. Middle Atlantic	14
2. New England	24
3. South Atlantic	24
4. East North Central	50
5. Pacific	60
6. Mountain	70

The rate increases roughly as we go from east to west across the continent, with the eastern and south Atlantic states lowest, the middle western states next, and the mountain and Pacific states with the highest rate.

No completely satisfactory explanation has been offered for this difference between regions, which is increasing rather than decreasing in recent years. Religious differences may account in part for the difference, with the large concentration of Catholics in the New England states. On the other hand, the Middle Atlantic states are largely Protestant and their rates are lower than those for New England. The mountain and Pacific states represent in a sense the last frontier in the United States and the freedom of that way of life may be communicated to family relationships. This argument is open to question on the ground that the divorce rate among the pioneer families of early America was very low. Rural and urban differences are of little use in this connection, for the mountain states are on the whole sparsely populated and the majority of persons are classed as rural. We are forced to state the facts of this regional difference and admit that the explanation is still largely obscure.

At the beginning of this chapter, we considered the high divorce rate and the fact that approximately one out of every six marriages ends in divorce. At first glance, this would seem to imply a complete dissatisfaction with the institution of the family on the part of a constantly increasing number of men and women. This judgment must be revised, however, when we realize that a large proportion of divorced persons ultimately remarry, some of them within a few years after divorce and some much later. This fact would lead to the conclusion that marriage as a social institution has not failed with the majority of divorced persons. Their individual marriage, for numerous reasons, may have become undesirable. But the fact that so many of them marry again would seem to prove that their disillusion rested with their original partner, not with the institution itself.

What is the number of divorced persons who prove their faith in the marriage institution by remarrying? We do not know exactly. Considerable difference of opinion exists between experts on the family as to the number or percentage of divorced persons who ultimately remarry. One student of the family estimates that 35 to 40% of divorced persons marry again within a year after divorce, that 60 to 65% remarry within five years, and

that 77% have remarried within ten years of divorce. Almost four-fifths of all divorced persons therefore, according to this estimate, demonstrate their belief in the institution of the family by marrying again after their divorce.⁵ Other estimates, however, do not confirm this optimism among divorced persons in the fundamental soundness of the marriage institution. Some studies indicate that only about 30% of all divorced persons ultimately remarry, while others put the figure at 50%. The situation is complicated by the fact that many divorced persons die before they have an opportunity to remarry, thus decreasing the proportion of the total who actually take the vows again. In any event, however, whether the percentage is 30 or 50 or 77, it is clear that a large proportion of the families annually broken by divorce ultimately recombine with different partners. We do not know what the success of these new family ventures will be. The stability of the family as the basic institution for human living together is not seriously questioned.

⁵ I M Rubinow, "After Divorce, What?" *New Republic*, 63 226-228 (July 16, 1930).

CHAPTER 48

THE REORGANIZATION OF THE FAMILY

In previous chapters, we have considered the changes taking place in the function of the family as a social institution. These changes are a reflection of the larger changes in society as a whole. The family has become progressively less important in the institutional life of society as its various functions have been taken over by other institutions. This reduction in function has combined with the growing emphasis upon individual happiness in domestic life to render the family increasingly vulnerable as a permanent relationship between men and women. The disorganization of hundreds of thousands of individual families every year has called into question the fundamental bases upon which the modern family rests. Efforts are being made by many persons and agencies to strengthen the ties which bind the members of the family together and to render the institution more resistant to dissolution. These efforts take a number of different forms and approach the family from several different aspects. In this chapter, we shall consider some of the most important efforts to reorganize the family.

It is difficult to think of any social institution engaged in any constructive work in the community which does not directly or indirectly contribute to the welfare of the family. The great majority of individuals are members of families and the work of education and reconstruction carried out by such institutions as the school, the church, and the recreational agency might be considered as contributing to the stability of the family through the individuals which compose it. While this conception may be theoretically true, our task would be hopelessly extended if we attempted to include these agencies in our consideration of family reorganization. We shall therefore not attempt to cover all of the agencies which affect the family from all of its institutional aspects. Whatever other functions the family may have partially lost, it is still the principal institution for the bearing and early care of children, for the purchase of goods and services which keep the individual fed and clothed, and for the affectional relationships between husbands and wives, parents and children. We shall therefore consider the efforts toward family reorganization in terms of these three important functions—the biological, the economic, and the affectional.

The Biological Function

The welfare of each family depends in large part upon the physical qualifications of the persons who compose it. A relationship in which one or both of the marriage partners is mentally deficient or abnormal or is afflicted with a venereal disease is seriously endangered from the start. The successful family implies healthy and normal hereditary equipment of both of its members. A marriage based upon serious mental or physical difficulties cannot function effectively either from the point of view of the persons directly concerned or from that of society as a whole. Biological considerations are important not only to the prospective husband and wife but also to the community which must care for the abnormal or diseased children who are potential products of such a marriage. The realization on the part of society of its stake in human marriage is only gradually becoming clear. The city, the state, and the nation are all becoming more conscious of their roles in the prevention of the marriage of the physically unfit, although any direct activity in this connection is still met with opposition from a number of quarters.

The preventive approach to biological difficulties takes two general forms—the prohibition of marriage between the mentally deficient and the mentally deranged and the pre-marital examination for venereal disease. A number of states have instituted laws which forbid the marriage of the feeble minded and the insane, but the difficulty lies in their enforcement. With the same laudable intention, several states have made it necessary to procure a medical certificate of freedom from syphilis before the marriage license will be granted. A dozen states had some such statute on their books by July 1, 1938. New York was the last state to pass such a medical certification law and its provisions are typical of the majority of legislation in this field. Each prospective husband and wife must have blood samples taken by a licensed physician and then examined in a state laboratory. If one or the other is found to have syphilis in a communicable form, the marriage is not permitted. Such legislation serves the dual purpose of protecting the family from hereditary syphilis and also of finding out the amount of syphilis in the general population. Treatment is recommended in cases where the disease is found, although the state has no authority to force the individual to take treatment. One state has reported that over 90% of those persons found to have syphilis were completely unaware that they were infected. The degree of prevention in such instances is very high.¹

The purpose of these laws is commendable but the laws are not strictly enforced. Many certificates of good health are obtained on fraudulent grounds and marriages are carried out by diseased persons who may

¹ E. A. Macy, "Marriages Insured Against Syphilis," *Survey*, 74: 262-263 (August, 1938).

infect their spouses and their unborn children. The difficulties in the way of the efficient prosecution of such laws are largely inherent in our democratic tradition. Every individual is presumed capable of managing his own physical and marital affairs and any action on the part of the state is viewed as unwarranted interference with his private life. Preventive legislation of this type is valuable from the educational point of view by informing the public of the dangers lurking in certain diseases which were hitherto not publicly discussed or treated. Any rigid enforcement of such legislation, however, presupposes a greater acceptance of the powers of government than we have traditionally been willing to grant. Marriages between mentally and physically inadequate persons will continue for some time to come, despite any efforts to forbid them. Although in such instances the ounce of prevention is clearly worth more than the pound of cure, society must direct the majority of its efforts to the laborious and expensive cure.

Birth Control

If marriage between the physically and mentally unfit cannot be prevented under prevailing conditions, the next logical point of attack comes after such persons are married. Birth control is the spearhead of this attack, which has been launched from several different points of view. The voluntary limitation of the size of the family is both a biological and an economic device for improving its function and for bringing about a reorganization of individual families. The proponents of birth control have stressed the desirability of limiting the number of births in families which are physically normal as well as those which exhibit characteristics which are considered undesirable to society as a whole. Women of normal family stock are physically exhausted through excessive childbirth and suffer considerable wear and tear upon their bodies and minds in an effort to prevent these births by dangerous and unscientific methods. Families in the under-privileged economic groups are often unable to support the children which are ushered into the world at frequent intervals. The standard of living of the family is continually lowered by the birth of unwanted additional children, whose presence may literally take the bread out of the mouths of their brothers and sisters. The birth control movement is directed at the reorganization of the family from these two related points of view—the biological and the economic.

The biological approach is important in a large number of instances in which another pregnancy or birth in the family would be undesirable or dangerous to the mother. These instances include cases in which the following conditions are present: "a recent delivery or abortion; a history of repeated dangerous pregnancies, certain types of heart disease, active tuberculosis, high blood pressure and certain kidney diseases, diabetes; toxic goiter; venereal infections; extreme obesity, severe malnutrition,

general debility, family history with insanity, feeble-mindedness, epilepsy, or other nervous and mental disorders, hemophilia, hereditary deafness, blindness, familial feeble-mindedness."² These mental and physical ailments present problems of varying degrees of severity in case of the pregnancy of the wife. They indicate the extent to which birth control may serve as an agency to prevent the further disorganization of the family on biological grounds.

The economic welfare of the family institution is also an important consideration in the movement toward birth control. In a previous chapter, we pointed out that the median family income is only slightly more than \$1,000 per year, and that the majority of family incomes cluster closely about this level. The expense of bearing and rearing children is such that many families cannot afford to have large numbers of children and still provide a decent scale of living for the children which they already have. At least three different classes of the population would benefit in an economic sense from a knowledge of birth control—(a) Those who are employed but whose incomes never rise much above the level of minimum subsistence, (b) Those who are unemployed and are still living on their rapidly vanishing savings before applying for relief; (c) Those who are unemployed and already on relief, where they receive a meager dole for the support of their families. The number of children in a given family and the intervals at which they are born are not the only considerations in the welfare of the family group. Nevertheless, the relationship between biology and economics is so close and intimate that the one cannot be fully considered without the other.³

Eugenics

The most extensive and long-range attempt at reorganization of the family on the biological level is the movement known as Eugenics. For some time, many thoughtful persons have been concerned with the fact that the birth rate of many western European countries was declining at a differential rate of speed—that is, the birth rate of certain classes of the population was declining very rapidly and that of other classes was declining much more slowly. The result of this differential decline was that the lower income groups and those with less education were contributing more than their proportionate share of offspring to the next generation, while the upper economic groups and those with more educational advantages were contributing less than their proportionate share. This situation was viewed with alarm by certain social and biological scientists, notably those in England and the United States. They felt that some-

² Norman E. Himes, "Birth Control and Social Work," *Survey*, 75 74-75 (March, 1939)

³ Birth control is discussed in more detail in Chapter 40. We are considering at this point merely those aspects of birth control which apply directly to the reorganization of the family as a biological institution.

thing should be done on a large scale to decrease the birth rates among the lower economic group, particularly those with definite mental or physical deficiencies or abnormalities, and at the same time to increase the birth rate among the classes who were presumably better fitted both biologically and culturally to carry on the race. The attempt to limit the procreation of the allegedly unfit was known as *negative* eugenics, while the attempt to improve the biological heritage of the next generation by increasing the birth rate among the allegedly more fit was called *positive* eugenics. This movement attempts to better the human race and insure the perpetuation of the most desirable stock by these two related and reciprocal methods.

Under the impetus of *positive eugenics*, the emphasis is laid upon the selection of the biological traits which are considered most desirable to perpetuate in the next generation. Needless to say, the precise definition of these traits is extremely difficult. In general terms, the conscious selection of these desirable traits has been considered as follows. "The most important genetic objectives, from a social point of view, are the improvement of those genetic characteristics which make (a) for health, (b) for the complex called intelligence and (c) for those temperamental qualities which favor fellow-feeling and social behavior rather than those (today most esteemed by many) which make for personal 'success' as success is usually understood at present."⁴ This is a large order, particularly as it pertains to the qualities which make for "fellow-feeling and social behavior." The welfare of the family as an institution and the society in which the family functions would be served by such a program of genetic selection. But the difficulties in the way of such a program are so great as to be almost insurmountable. Any large scale program of positive eugenics would require much wider knowledge of the nature and mechanisms of heredity than we have at present. It would also imply a much more complete dominance of the state over the individual than is immediately probable in the democratic countries. Until the majority of persons are willing to accept the definition of some centralized authority—whether biological scientists, social scientists, or an impartial board composed of representatives of both—marriage and procreation will continue very much in the same way that it always has. No matter how desirable a long-range policy of conscious selection of biological traits might be, the majority of persons will cling jealously to one of the few undisputed privileges which still remain to them—that of the selection of a mate.

A further difficulty in any program of positive eugenics rests in the definition of what traits are hereditary and what traits are produced in part by the cultural surroundings in which the individual, family, or class is reared. It is often assumed that persons in an inferior economic or

⁴ Taken from a "Plan for Improving Population Drawn by Famed Geneticists," *Science News Letter*, 36:131-133 (August 26, 1939)

social status are biologically inferior to those in a higher status and that the former are therefore less desirable parents than the latter. This assumption is fallacious. There is no discernible correlation between economic status and *innate biological* characteristics, although there is clearly a difference between persons in various social strata and the educational and cultural equipment which they may have. In other words, "... there can be no valid basis for estimating and comparing the intrinsic worth of different individuals without economic and social conditions which provide approximately equal opportunities for all members of society instead of stratifying them from birth into classes with widely different privileges." Those cultural considerations are often over-looked by persons who feel that the upper economic classes are intrinsically superior to the lower and hence should be encouraged to have more children, while the lower economic classes are discouraged to do the same. Many families in the business and professional classes should undoubtedly have more children than many families in the working classes, but the reason is economic and not biological. The upper-class families have the means to provide desirable cultural and educational opportunities for their children, which the lower-class families often lack. From the strictly biological point of view, however, there is no necessary difference between the offspring of the different classes.

Included in the category of *negative eugenics* are all of the programs and techniques designed to forbid the marriage of the biologically unfit or prohibit their procreation after marriage. Medical certification for venereal disease before marriage, birth control for the mentally sub-normal, and the sterilization of those with definite hereditary mental deficiencies, are among the mechanisms suggested for a concerted program of negative eugenics. We have discussed the first two of these preventive devices in the biological reorganization of the family. We may consider some of the claims and counter-claims of the proponents of sterilization as a means of insuring the sound biological basis of the family.

Sterilization is a surgical operation which makes it impossible for the male or female to produce offspring. A comparatively simple operation in the male, it is somewhat more difficult in the female, but in neither case does it involve a highly painful or dangerous process. Sterilization does not interfere with the normal sexual relations of the man or woman, but only renders it impossible for them to have children. According to the latest figures, sterilization laws have been passed in twenty-nine states. The majority of these laws apply both to mental defectives (feeble-minded) and to the mentally deranged (insane). They can be invoked only on the written consent of the nearest relatives of the patient. The latter is clearly not able to make an intelligent decision for himself, since he is by definition either feeble-minded or insane and can have no idea of the issues involved. Considerable difference exists in the practice of the

various states as to whether the law applies to *any* mentally deranged or mentally defective person in the state or only those in state institutions. The trend appears to be in the direction of applying the law to *all* those who are clearly biologically inadequate to act as parents for the coming generation. Sterilization is thus closely related to the preservation of the family, since many of the persons outside of institutions who come under the jurisdiction of the laws are already married. Some states have even required the compulsory registration of the feeble-minded and refuse to grant marriage licenses to such persons until proof has been given that one of them has been sterilized. In this way, the feeble-minded are allowed the pleasures and companionship of marriage but without the complication of bringing inadequate children into the world.⁵

The various states have shown a great variety in the severity and extent to which they have invoked their own sterilization laws. In the thirty odd years since the first state sterilization law was adopted, only 28,000 persons have been sterilized in the country as a whole. California is the only state in which widespread sterilization has been resorted to, with approximately one-half of the total being performed in this one state. Sterilization is a drastic step and many states have hesitated to employ it for reasons of religious prudence or because of their traditional caution to make such an incursion upon the rights of the individual. The Supreme Court of the United States has, however, placed its august blessing upon the practice in a famous decision by Justice Holmes, in which he made the classic statement that "three generations of imbeciles are enough." The effects of such a practice upon the family heritage is a desirable one, in so far as those persons who are definitely and hopelessly abnormal and subnormal are not allowed to contribute their diseased stock to the next generation. Sterilization is one mechanism whose effects upon the physical heritage of the family are clearly demonstrable. To the extent to which undesirable family stock is prohibited from reproducing, the family as a social institution has made a net gain.

The advantages of sterilization should not, however, blind us to its limitations as a cure-all for the biological difficulties of the family. These limitations take two general forms: *First*, many of the mental disorders which interfere with the functioning of the family are not inherited in the germ plasm but are acquired by the individual as a result of a severe crisis or shock. The most important of these mental derangements occur to persons who are completely normal at birth and they furthermore are not transmitted in the germ plasm. Sterilization would therefore not affect one way or the other the thousands of families which cannot function effectively because of the acquired mental disorganization of one of its members. The *second* limitation to sterilization as a panacea grows

⁵ Paul Popenoe, "Sterilization in Practice," *Survey*, 74.202-204 (June, 1938)

out of the peculiar mechanism of inheritance. Many millions of mentally normal persons carry in their germ plasm traits which will produce mentally deficient offspring if united with similar traits in the mate. Such persons carrying these hidden traits marry and produce subnormal children under circumstances which sterilization cannot touch. There is no completely sure method of determining what persons carry subnormal traits in their germ plasm and at the same time are perfectly normal themselves. Even if these carriers could be found out, it would be impossible to sterilize persons who were themselves completely normal. The majority of feeble-minded persons in any one generation come from such normal parents who transmit subnormal traits in their germ plasm. It has been estimated that only about 11% of the feeble-minded in any one generation are children of the feeble-minded. The other 89% are the children of parents who are perfectly normal.

The possibilities for sterilization to solve the biological abnormalities and subnormalities of the family are thus limited. Approximately six million persons now living in the United States are included in the following categories: (1) patients of state hospitals for the mentally deranged at the present time; (2) have been patients in such institutions; (3) will be patients at some time in their lives. A majority of this vast army of the past, present, and future mentally deranged cannot be helped through sterilization, since they will become deranged by factors which are non-hereditary in nature. The large army of the mentally deficient, numbering also about six million persons, can be eliminated only in part by the sterilization of all the feeble-minded in the preceding generation. This number is limited to about 11%, even in the unlikely possibility that all of the feeble-minded in the preceding generation would be rendered incapable of procreation. The biological activities of the family must be made more efficient by other means than sterilization if any substantial advances are to be made in this important field.⁶

Infant and Maternal Health

The most important efforts being made to reorganize the family through its biological functions are those which provide for the health of the child and the mother. The programs of private and public agencies are directed to the two related goals of caring for the mothers during pregnancy and childbirth and for the children after they have been brought into the world.

The principal work in this matter has been done by the federal government in connection with two major legislative acts, the Sheppard-Towner Act of 1921 and the Social Security Act of 1935. Under the terms of the former act, which was officially called the *Maternity and Infancy*

⁶ M. F. Nimkoff, *The Family* (Houghton Mifflin Company, Boston, 1934), pp. 465-466.

Act, 1921, the federal government provided yearly cash grants to states for the purpose of improving and augmenting the existing facilities for the care of the expectant mother and child. The annual appropriation under the act was \$1,240,000, which was divided among the states partly in accordance with their needs and partly to match additional grants which they might make for similar purposes. Each state received five thousand dollars annually, irrespective of any matching appropriation which it might make. Each state received an additional five thousand dollars, provided they matched this sum from their own funds. The amount of money involved in these yearly grants was minute, compared to the yearly expenditures for other functions of government. The amount of help given to thousands of expectant mothers and children is suggested by 2,294 child health clinics, 311 prenatal clinics, and 373 combined prenatal and child health clinics in permanent operation at the expiration of the act in 1929. When the federal funds ceased, 16 states continued the complete program with their own funds and 18 states continued it to the limited extent of their own contributions. The groundwork had been laid for a more extensive program of maternal and child health.⁷

This program has been realized in part under the Social Security Act of 1935. This act was primarily intended to set up unemployment insurance and old age protection on a national scale, but one of its sections dealt with the problem of health for mothers and children. Under this section of the act, the sum of \$3,800,000 is authorized for annual grants to states "for extending and improving services for promoting the health of mothers and children and for locating, diagnosing, and treating crippled children." This is slightly more than three times the appropriation under the Sheppard-Towner Act and represents the growing national awareness of this important aspect of family health. The rural areas and small towns of the nation will be the principal beneficiaries of this program, since they had hitherto been almost totally lacking in adequate health programs, particularly as applied to prenatal and child care. The services in the care of crippled children furthermore are the first medical services that have ever been offered on a continuous basis by the federal government in cooperation with the several states.⁸

The act is administered under the complicated organization which our system of federal, state, and local government necessarily entails. The *federal* government is represented by the Children's Bureau of the Department of Labor, which formulates the basic policies, provides advisory and consultation services, compiles statistical material, and furnishes re-

⁷ Grace Abbott, "The Federal Government in Relation to Maternity and Infancy," *Annals of the American Academy of Political and Social Science*, 151.92-101 (September, 1930)

⁸ Katharine F. Lenroot, "Health Security for Mothers and Children," *Annals of the American Academy of Political and Social Science*, 202.105-115 (March, 1939)

search findings to the states and local governments. The *states* have divisions of child hygiene or maternal and child health which supervise the work of the *cities, towns, and counties* where the clinics are located and where the benefits of the program are actually experienced by mothers and children. The funds available are not adequate to care for the thousands of mothers and children who urgently require attention. As a result, the service is still largely confined to education and supervision given by public health officers and nurses. This service may be briefly described.

(1) *Service to Mothers*.—The majority of mothers in the cities of the United States have medical care provided by the hospitals, which is presumably adequate on the whole. This is not the case in the rural areas, where the majority of births occur at home, many of them unattended by skilled physicians. The difference in the urban and rural situation is shown by the 71% of urban births which take place in hospitals, as compared to the 14% in the rural areas. Approximately one out of every ten babies in the United States is born with no medical attention whatsoever. This is the type of family which so urgently needs the supervision and care of the public health authorities. To meet this need, a number of states have provided trained nurses to give demonstrations in home delivery and make every effort to instruct the mother or the midwife in the rudiments of obstetrical practice. Other states have trained nurses to care for the mother in the dangerous period immediately after the birth of the child and who thereby reduce the mortality of mothers and children which usually comes at this time. This program is only a meager beginning in the tremendous task of rendering the family more immune to danger at its most vulnerable point. The time when every mother will have adequate prenatal care, skilled attention at birth, and complete post-natal attention is still in the distant future. If the biological safety of the family is to be fully safeguarded, some such program must eventually be forthcoming.

(2) *Service to Children*.—The same educational and supervisory program is followed after the child has been born and brought safely through the crucial period of early infancy. The mother is encouraged to bring the child to public health clinics, where it is vaccinated for small-pox and treated against diphtheria. At periodic intervals during the pre-school period, the child is brought to the clinic, where it is thoroughly examined for the various communicable diseases and where suggestions are made concerning its diet and care. This program is continued as a part of the school health program when the child is old enough to go to school. School children are periodically examined by a physician and in many cases by a dentist and efforts are made to correct many of the difficulties in the health of the child. The inadequacy of this program in the country as a whole is indicated by the fact that there is no public health and

nursing organization in approximately 1,000 counties of the United States according to the latest available figures. Many thousand rural families must still suffer the perils of childbirth and infant mortality in very much the same way as their pioneer ancestors a hundred years ago.

The Economic Function

We turn next to the various efforts at family reorganization in the economic field. The family is the most important institution for the consumption of economic goods and services and the majority of efforts at reorganization are directed toward supplementing or augmenting the income which each family has for purposes of consumption. Such reorganization takes a number of different forms, some of which are directly related to the problem of family income and others only remotely related. Strictly speaking, every effort designed to raise the scale of living of the American people might be considered in terms of the economic reorganization of the family. Wages and hours legislation, collective bargaining provisions, public works programs, and similar efforts at increasing the real income of the mass of people would come under this general category. We shall confine our discussion, however, to the family reorganization afforded through mothers' aid, unemployment relief, and old age provisions.

In the previous section, we considered the biological phases of public aid to mothers and children. The economic aspects of this problem are equally important, if the family is to provide the most effective setting for individual stability. Public programs have been directed at eliminating or minimizing the insecurity which the child feels in a family setting where the breadwinner is no longer able to function. This element of uncertainty and insecurity in the family is one of the most disorganizing heritages that can be handed on to the child in his most impressionable years. The child can endure the lack of many material goods and comforts in the family, particularly if he has never become accustomed to these amenities of life. But the constant feeling of insecurity among his parents, the fear of unemployment, of sickness, of a penniless old age tend to produce a highly demoralizing atmosphere in the home. The personality of the growing child cannot develop to its highest potentialities if he spends his early years in a home pervaded by fear. The scars which insecurity leave upon the personalities of millions of children are very devastating.⁹

The Social Security Act of 1935 eliminates some of this insecurity in families where the breadwinner is dead, divorced, incapacitated, or missing. Under the provisions of the act, financial aid is advanced by the federal government, the states, and the local governments to mothers of broken families. This aid is given on the basis of the number of children

⁹ Paul T. Beisser, "Appraisal of Social Security Provisions Affecting Children," *Annals of the American Academy of Political and Social Science*, 202: 88-94 (March, 1939).

in the family and is specifically designed to make the child more secure by providing a minimum of economic security. It has been estimated that there are approximately two million children in the country who are dependent under the terms of this act. According to figures for the fall of 1938, more than 600,000 of these children in 250,000 families were receiving some financial care in their own homes through the operation of the act. The total expenditures for this purpose were about \$72,000,000 for the year 1937, the last full year for which figures are available. This is a large sum, but the happiness and security given to the 600,000 children cannot be measured in dollars and cents. The 250,000 families were literally reorganized through the stability imparted in this way to the lives of their children.¹⁰

A number of state plans had been in operation to aid mothers and dependent children before the passage of the Social Security Act of 1935. Only three states in the country did not have some sort of mothers' aid provision before 1935, although the majority of the states made only very meager grants. Approximately three-fourths of all children receiving aid prior to 1935 were located in nine of the more progressive states, while the others did little or nothing to solve this problem. The passage of the Social Security Act, however, greatly increased the number of children aided by public money, in the year 1934, only 270,000 children were cared for under the various state and local provisions, as compared to the 657,000 who were helped in 1938.

The majority of the families aided by this program have been broken by the death of the husband and father. Sixty-one per cent of the mothers were widows, while 25% were divorced, separated, or deserted by their husbands. The families so aided have not been a burden upon their local communities. In addition the assistance given the children has been greater than would have been provided under the ordinary machinery of relief. The average payments per family vary widely from state to state, with some states contributing a total from all sources of \$10.81 per month and others contributing up to \$57.49 per family per month. The average for all of the states participating in the program was \$31.72 per family in September, 1938. In many cases, this is the total income of the entire family which may include four, five, or six children. These payments should be larger if they are to provide any real security to the families and the children concerned, but they are nevertheless a great improvement over former standards.¹¹

The implications of such a program of economic reorganization are far-reaching and extend beyond the supplying of the minimum essentials of life to the mother and her dependent children. The Social Security Act

¹⁰ Jane M. Hoey, "Aid to Families with Dependent Children," *Annals of the American Academy of Political and Social Science*, 202 74-81 (March, 1939)

¹¹ *Ibid.*

marks the beginning of a national responsibility for the security of millions of underprivileged children and the families in which they live. The future stability of these children and the stability of their own families in later life depends upon the incorporation of such a program into the permanent welfare policy of the government.

Family Unemployment Relief

The tremendous program of public relief in the United States in recent years is an attempt to maintain the economic organization of the family on a minimum subsistence level. We cannot consider the ramifications of this vast attempt at social reorganization, the most comprehensive and expensive that the world has ever seen. The economic aspects of unemployment relief are discussed elsewhere.

The family aspects of this program may be considered very briefly, since they involve principles of family organization which we have already considered.

The family is a social institution whose economic functions form the basis for its existence. In the modern industrial economy, the majority of families are directly dependent upon the cash income received every week by the breadwinner. If this income is cut off for any extended period, the entire stability of the family is seriously threatened. Savings are exhausted, the family borrows money until credit is no longer extended, friends and relatives may help. But sooner or later, the majority of families are forced to turn to some public agency for financial relief. Such aid was extended by private and some local public agencies until the Roosevelt administration came into power. This administration took the position that the basic economic welfare of the family was a fundamental concern of the federal government. The various direct relief and work relief projects have saved the economic and social organization of millions of families throughout the country. Many of these relief projects were evolved under the impetus of a crisis situation and hence are far from perfect in relieving the distress of the nation. The family grants under the home relief program have often been hopelessly inadequate to do more than keep the family alive. The wages paid under the program of work relief have been higher and hence more adequate to the maintenance of the physical and spiritual integrity of the family. Hasty and inadequate as these relief programs have been, however, they have had an incalculable influence in preserving the economic and psychological integrity of the family.

Unemployment relief for the indigent family is intended as a temporary measure. It is based upon the assumption that the business depression is temporary and that the majority of families who receive relief at the height of the crisis will find employment when the crisis is over. In other words, unemployment relief is not intended to be a permanent method of reorganizing the family on an economic basis. It is difficult for the average

family to maintain its self-respect after a long period of unemployment and relief from the state, whether that relief be given directly or in the form of public works projects. The present industrial organization of the country is such, however, that millions of families find themselves periodically unemployed and dependent upon public relief. Temporary relief is imperative if the family is to survive as a functional unit. But the family must have other methods of maintaining itself on a permanent basis than those provided by a relief program, no matter how efficiently it may be administered.

Family Unemployment Insurance

Direct relief is not the only form of temporary reorganization of the purchasing power of the family. The Social Security Act of 1935 provided a system of unemployment insurance, based largely upon a payroll tax levied on employers, which is intended to support a family on a temporary basis during a period of unemployment. In view of the length of time necessary to build up an adequate reserve fund, the full effects of this form of family reorganization have not been felt. Many types of workers, furthermore, are not included under the act and must therefore fall back upon some form of public or private relief. There are also many persons who are unemployable through sickness, injury, or other disability and hence must be supported by direct relief. Nevertheless, it is estimated that 27,500,000 workers are employed in industries covered by the state unemployment laws which were an outgrowth of the Social Security Act. Contributions are made to the reserve fund by about 670,000 employers. By November 1, 1938, a reserve fund of \$961,000,000 had been built up to the credit of the various states, to be dispersed when the occasion demanded. In addition to this large balance remaining, the various states had paid out more than \$340,000,000 in unemployment benefits by November 1, 1938, to more than 3,500,000 unemployed workers. The scope of this program of reorganization will increase in years to come, as additional classes of workers are made eligible for the benefits of the act.¹²

The average weekly benefit received in the various states for total unemployment was \$11, with the actual payments ranging all the way from \$6 in some states to a maximum of \$14 in others. The majority of persons receiving these benefits were the sole breadwinners of their families and were obliged to support several people on the average benefit of \$11. This sum is barely sufficient to provide the essentials of existence for a family, without many of the necessities of life and with none of the luxuries. The important consideration in this program, however, is that a beginning has been made toward cushioning the drastic effects of unemployment upon the family by means of an orderly plan of insurance. The recipients of this

¹² William Haber and J. J. Joseph, "Unemployment Compensation," *Annals of the American Academy of Political and Social Science*, 202 22-35 (March, 1939)

form of aid need not feel that they are in any sense the object of public charity. The morale of the family is higher under such circumstances than it is when they are receiving state relief grants. Such a program of unemployment insurance is an improvement over the granting of relief and should be extended to other large classes of workers until all of the gainfully employed are eligible for the benefits of the act. These measures are again clearly temporary in their implications and are not a substitute for the full-time employment of the head of the family. A steady job with a maximum of security is the best measure for the economic and emotional stability of the family.

Old-Age Assistance

The final form of the economic reorganization of the family comprises the measures which keep its members together in their old age. In a previous chapter, we pointed out that the function of protection of the aged has been taken out of the hands of the family in considerable measure and entrusted to the various agencies of government. In the present connection, these methods of assisting the aged are important from the point of view of preserving the integrity and solidarity of the family when it has been reduced to the husband and wife alone. The former system of public care of the aged was based upon the poorhouse or old people's home, where the aged husband and wife were compelled to live an institutional life with few of the comforts and privacies of their own home. The program of old-age assistance, whether in the form of direct grants to the aged or old-age pensions, is calculated to provide sufficient money for the old people to keep their home and live modestly by themselves. In the majority of instances, the children of the old people have gone and they have nobody but themselves to care for. Large numbers of the aged and indigent, of course, are widows or widowers, but many thousands of these old persons are still living with the spouses of their youth.

The average allowance per month for old-age assistance was \$19.48 during the period from July, 1937, to June, 1938. The median figure for this same period was just \$18, which means that the benefit in exactly half of the cases was above this sum and in half of the cases below it. These allowances are paid to the indigent aged on the basis of need and are intended to support the hundreds of thousands of persons who are not eligible for old-age pensions under the Social Security Act. A considerable period of time is necessary for the pension plan to affect all or even a majority of those persons over 65 who are in need of support. In the meantime, some form of outright grants is necessary. The money for these grants has been provided partly by the federal government and partly by the various states. Such grants serve to provide a minimum of the economic security which is so necessary to maintain the peace of mind of the older members of the community. Whether the husband and wife are together in their old

age, or whether they have been separated by death, the minds of the living are made easier by the assurance that they will have some economic security.¹³

The Affectional Function

We have considered some of the attempts to rehabilitate the family on the biological and the economic levels. We shall now review the efforts that are being made to reorganize the affectional and personality functions of the family. It is desirable that the family have a good biological heritage, that its members be born healthy and remain healthy, that it have the income to buy the minimum of food, clothing, and shelter in times of employment and unemployment alike, and that its members look forward to an old age in which they have a modicum of economic security. But it is equally desirable that the intimate and personal relationships of the family be healthy and normal, that husband, wife, and children give to one another the sympathy and affection which are so important in family life. The process by which these affectional relationships are fostered in the family is intangible and difficult to define and isolate, but it is no less important on this score. When the affectional relationships break down, the family is no longer capable of performing its most important function, that of providing an intimate and affectionate environment in which the individual may develop his personality to the full. The problems of family reorganization on the biological and economic levels are comparatively simple and direct, particularly in the case of the economic inadequacies of the family. The problem is one of providing sufficient money so that the family may function efficiently as an economic institution. In the case of the affectional relationships, however, the problem is much more difficult. It involves the rehabilitation of an extremely close and intimate personal relationship or group of relationships. The attempts to reorganize the family in the realm of the affectional function have accordingly been somewhat groping and indefinite and have produced comparatively few tangible results. Such efforts, random and experimental as they are, must be continued and improved if the family is to overcome contemporary forces which are rendering it increasingly unstable.

The importance of education in the field of family relationships cannot be over-estimated. If boys and girls are to make better husbands and wives, if husbands and wives are to make better fathers and mothers, they must be made aware of the nature of the problems of marriage and parenthood. Education for family life and parenthood was formerly carried out by the family itself in an informal manner. Young people were taught whatever was necessary for homemaking and parenthood in the informal contacts with their own mothers and fathers in the intimacy of the family

¹³ Cf. Alvin Roseman, "Old-Age Assistance," *Annals of the American Academy of Political and Social Science*, 202:53-59 (March, 1939).

circle. Such informal education was adequate for the relatively simple problems of homemaking and adjustment which faced the families of an earlier generation. But these problems have changed with the modern world. Adjustment in marriage in an urban, mobile, non-religious environment is more difficult than in a rural, settled, and highly religious social setting. Men and women require an education which recognizes the difficulties inherent in marriage under contemporary conditions. This takes a number of forms, which we may summarize as youth and adult education or education before and after marriage.

(1) *Education before Marriage*.—Education which prepares the individual to face the manifold problems of married life is an important preliminary to a successful family relationship. This education takes into consideration not only the physical and biological aspects of sexual relationships but also the interpersonal relationships which play so important a part in marriage. It is perennially difficult for parents and educators alike to determine at what age the child should be taught the rudimentary facts about sex differences and reproduction. The manner in which this information is presented will determine in considerable measure the basic attitudes which the child will develop and maintain in later life concerning this important phase of human living together. The consensus of opinion among experts in this difficult field is that children should be given rudimentary sex knowledge at a much earlier age than has been the traditional practice in our society. Knowledge of sex is accompanied by less emotional maladjustment and unsettlement if it is received in the early years than if it is delayed until almost the age of puberty. Investigations have demonstrated, for example, that a better marital adjustment was made by women who had received this vital information before the age of six than by those who had not received the same information until after twelve. Children who pass through the years from six to twelve in complete ignorance of the basic facts of sexual differences and sexual reproduction are often emotionally disturbed by their proximity to a mysterious and interesting process about which they know little or nothing. What little information they are able to pick up during these early years is often distorted and biased, with the result that their attitudes are formed on the basis of misleading and erroneous information. By the time that they are correctly informed about these matters, provided that they ever receive any systematic instruction, they have often formed unfortunate attitudes which they can never completely discard. Girls and boys alike who have been conditioned to the belief that sexual relationships are inherently dirty and immoral may experience great difficulty in making any later satisfactory sexual adjustment in marriage.¹⁴

Sex education in adolescence may be more concrete and specific than

¹⁴ Joseph K. Folsom, *The Family* (John Wiley & Sons, Inc., New York, 1934), p. 535.

that given in the years before puberty. This education varies from that imparted to children of high school or college age as a part of their general education to the specific information given to young couples about to marry. Many colleges have adopted courses of instruction which go a long way toward clarifying some of the ignorance on the elementary facts of sex hygiene and sexual reproduction. Education on the prevention and treatment of venereal disease has in recent years become an integral part of some of these courses, as public opinion has accepted the frank and open discussion of these hitherto taboo matters. One of the most important functions which such education can play is to remove many of the morbid and pathological fears which formerly accompanied the physical and psychological changes of adolescence and maturity. These fears can be removed without going to the other extreme and encouraging deliberate lapses from the conventional moral code. When adolescent young people realize that the problems they face are not peculiar to themselves but are shared by others, they are often able to make their own adjustments in a more rational manner. The emotional crises through which they are passing will thus be understood in terms of the natural process which separates childhood from maturity. Secret worries about "sin" will be brought into the open and shown to be largely products of their own ignorance and imagination. The taboos against sex and sex instruction are still very strong in our mores and education in this delicate field still must overcome many objections. There is an increasing realization, however, on the part of educators and intelligent members of the general public that accurate instruction in these matters is the surest way to a normal and happy adult life.

Pre-marital sex education takes its most specific form in the instruction given young men and women about to enter into matrimony. This information is given by a number of different advisers, ranging in training and specialized knowledge from parents and family friends to physicians and skilled social workers. The general purposes of this pre-marital education are two-fold; *one*, to instruct the young people in sexual relationships in order to ensure the maximum of adjustment and satisfaction in marriage, and *two*, to furnish them with reliable techniques of birth control so that their children may come when they want them and can afford them. The person who imparts this information should ideally be trained both in medicine and in family social work, but such combinations are rare. Better counselling on the part of the ministers, family friends, and social workers who now provide a large part of this information may be insured through training in these matters in the professional education of the groups who are called upon to instruct young people. We do not know, of course, to what extent such education will eliminate or mitigate the tensions which are produced in marriage through ignorance of sexual matters.

Neither is it possible to tell to what extent such knowledge, if widely distributed, will increase or decrease the number of sexual relationships outside of marriage. Studies in this field are too recent and information is too fragmentary to allow any such generalizations. Sex instruction on a wide scale is still too new to hazard any definitive conclusions as to its effects upon the affectional relationships in marriage. It is reasonable to assume, however, that sex education from childhood to maturity will have a beneficial effect upon the relationships which form so intimate and important a part of the family.

(2) *Education after Marriage*—Education for parents includes a number of fields related only indirectly to the problem of sex, which bulks so large in all forms of pre-marital education. Adult education takes into consideration many of the economic and cultural problems which the family must solve in addition to the problem of sexual adjustment. Such education operates directly through the schools in the community—the nursery schools, grammar and junior high schools—and through the parent-teacher associations of these institutions. The parents are reached in their capacity as parents, with interests which are peculiar to this group. They are often taught the rudiments of psychology and sociology, in so far as these branches of study can contribute to the knowledge of child psychology, the relations between parents and children, and those between the parents themselves. Parent education on a mass scale is still in the experimental stage at the present time. If the inter-personal adjustments in the family are to be improved, however, this is one of the most important channels through which improvement can take place.

Parent education is an attempt to apply knowledge gained in the social and biological sciences to the problems of family life and parenthood. The mechanism which most of this education takes is the study group organized about a particular institution. The study group plan reaches the largest number of persons and is devoted to a wide range of subject matter related to the family. Programs of study are arranged, readings are assigned and discussed in the group, visits are made to clinics and hospitals, and most of the techniques known to higher education are applied under the group plan. In a recent year, it was estimated that approximately 500,000 mothers and fathers took part in such study groups, meeting either weekly or biweekly for a considerable part of the year. In addition to the school groups mentioned above, these units were organized by churches, social settlements, health clinics, welfare centers, and many other institutions. These groups were aided and furnished with information by a wide variety of public and private agencies, ranging from local boards of education to such national bureaus as the United States Office of Education and the Children's Bureau of the Department of Labor. Through the efforts of these agencies, thousands of parents were brought into contact for the first

time with the best available knowledge about the problems which they must meet as husbands, wives and parents.¹⁵

Family Clinics

Closely allied to the general program of mass education for parents are the various clinics which have been established to deal with family problems on an individual basis. The most significant work in this field can only be carried out on an individual consultation basis, in view of the intimacy and complexity of the problems which face each individual family. Many of these agencies are highly specialized in the nature of the work which they attempt to do, dealing with such aspects of family life as birth-control, child-placing, legal aid, medical aid, and maternal health. The majority attempt to disseminate information available in their own specialized fields to persons who request such information and whose requests appear to be bona fide. The range and scope of these agencies is so wide that we cannot consider them here. They are increasing in number in the large urban centers of the country, where the problems of marital adjustment are most difficult. Professional men of all kinds are offering their services in the work of consultation and guidance as the public realization of the necessity of such services increases in intensity and the demand becomes more general.¹⁶

We may consider briefly the work of the newest type of social agency which treats the problems of the family. This is the marriage clinic, which specializes in consultation and treatment of the intimate problems of marital adjustment and maladjustment. The majority of persons who come to such institutions are those who have experienced some difficulty in their marital relationship. It follows that these clinics deal with many cases of family disorganization, either actual or potential. The best known of these clinics is the Institute of Family Relations in Los Angeles, California, directed by Dr. Paul Popenoe. Several large cities throughout the country have similar centers, which are variously known as Family Consultation Center, Marriage Consultation Service, Homemakers Advisory Bureau, Committee on Marriage and the Home, and the like. Considerable variation exists between these agencies as to the amount of information exacted from the client before the consultation is given. Their examinations range all the way from a few routine questions to elaborate procedures involving medical examinations, psychological tests, psychiatric examinations, and detailed case histories of both parties from their childhood until the time of the consultation. On the basis of this detailed information, plus a series of interviews conducted both individually and as a couple, the consultant

¹⁵ Ralph P. Bridgman, "Parent Education," *Social Work Year Book* (Russell Sage Foundation, New York, 1937)

¹⁶ Robert G. Foster, "Servicing the Family Through Counseling Agencies," *American Sociological Review*, 2: 764-770 (October, 1937)

is often able to identify the source of the tensions which are disorganizing the individual family.

Marital maladjustments are treated in the clinic as the natural outgrowths of a series of situations and factors in the lives of the individuals concerned. Some of these factors are so deeply imbedded in the personalities of the two persons most vitally concerned that they can never be modified. Many other factors, however, are surprisingly obvious to the consultant, who is able to see the family relationship from an objective and impersonal point of view. When these difficulties are explained to the husband and wife, an immediate change is often noticeable in their relationships. They become conscious for the first time of some habit, mannerism, personality trait, or attitude which has consistently annoyed the other person and rendered an amicable marital relationship out of the question. The majority of the problems of marital maladjustment are not simple, but the record of many expert consultants has been surprisingly high in bringing about permanent reorganizations of the family life of many of their clients. In other instances, the consultant can only point the way to the source of the maladjustment in the family. The task of reorganization is often long and arduous. The important consideration in such treatment is the development of new attitudes in place of those which formerly caused the tensions. Husbands and wives must be given new goals to work for and the achievement of these goals takes time. They must furthermore cooperate with the consultant if any lasting benefits are to be derived from the service. This process is one of the most difficult tasks of reorganization in human life, since it involves a *relationship* between two people rather than merely a change in two individuals. The future of the family depends in considerable part upon the harmonious functioning of these basic affectional relationships.

PART XII

Crime

CHAPTER 49

THE PROBLEM OF CRIME AND THE CRIMINAL

What Is Crime?

The social phenomenon of crime is of perennial interest to every citizen. This interest is hardly matched by clear understanding of what specifically is involved in the concept of crime and what is not. While there may be general ideas about crime, its exact nature still remains an enigma for most people. It would appear, then, that a clear understanding of what is involved in the term, crime, is necessary. The words, crime and criminal, are used rather loosely with the result that they lose the precise meaning that should attach to them. There must be a clear line of distinction between crime and non-crime, between behavior which is considered to be criminal and that which is non-criminal conduct. It is only by a clear, precise definition of terms used that a non-confusing distinction can be drawn between the criminal class and the non-criminal class of our population.

The most precise and least ambiguous definition of crime is that which defines it as behavior which is prohibited by the criminal code. The omission of an act may also be a crime if the law expressly requires it. The criminal law describes and names many kinds of behavior such as murder, rape, burglary, arson, etc., and proscribes them. Such acts are considered to be such a menace to the peace and security of the social group that protection against them by society by the use of legal coercion is considered essential by the law-making body. The criminal law, then, is the official list and description of legally proscribed forms of behavior. It is thus that criminal behavior in a given community can be identified and classified.

The unwritten common law of England forms the basis of a large part of our criminal laws. The customs and laws of England at the time of the early settlements in America were naturally brought over with the colonists. This unwritten common law has now been written down and enacted into statutory law. It is the penal code of the various states which determines which acts are regarded as crimes and what punishment is to follow the commission of such acts. Most states still retain the major portion of the common law so that it can be drawn on in case of offences which the state legislatures have been unable as yet to prohibit in the statutes. It is difficult for legislators to anticipate every possible type of public wrong that may conceivably be committed.

Definition of crime in legal terms obviates possibilities of confusion unless there be ambiguities in the legal definitions of specific crimes. There may be a question at times whether a specific homicide is murder in the first or second degree. Even so, the clarity and precision of a legal rule are infinitely superior in this respect to definitions of crime in either moral or social terms. To define crime as behavior which is immoral would be obviously unsatisfactory and confusing. There is too much diversity of opinion on questions of morals to make this a precise basis of definition. The same difficulty inheres in the definition of crime as anti-social behavior. In this instance, the social consequences of behavior would be taken into account in the definition, but since standards of evaluation of behavior must necessarily be to a great extent personal, the danger of ambiguity and lack of precision invalidates this approach.

Michael and Adler insist that "not only is the legal definition of crime precise and unambiguous, but it is the only *possible* definition of crime." Generally speaking, it is evident that the easiest way to find out what behavior the people of a given community consider to be immoral or anti-social is to refer to the criminal code. There can be little doubt that the behavior which the criminal law forbids is also that behavior which the great majority of people condemn as socially dangerous and injurious.

The thralldom of custom, common to primitive societies, is sufficient to control the behavior of individuals in such societies. Human behavior here easily falls into the mould of a traditional pattern. Age-old group experience dictates what is permissible or not permissible and formal criminal law in such a primitive group is unnecessary. The complexity of modern civilized society presents a different picture. Were formal law absent, were the bounds of legal and illegal behavior not clearly drawn by the law, chaos might well result. Modern civilization without formal law is simply unthinkable. Criminal law in modern society is a necessary device to control the behavior of its constituent members.

The difficult question that must constantly be met is—what behavior shall be made criminal? The criminal law may be correctly considered to be a means to the social good. Therefore, consideration of the deleterious effects and consequences of any particular behavior to a given society would be the first criterion in answer to this question. When one hears the expression, "There ought to be a law," it indicates that common experience indicates that socially undesirable consequences are following from certain behavior, as judged by that particular society. Of course, behavior which is judged to be contrary to the welfare of one nation or state may not be so regarded in another country. Hence, we witness the variations in the statute law of different political bodies.

Ordinarily, in any given society, empirical investigations of the consequences of certain forms of behavior will be necessary to determine what acts are socially harmful and undesirable before it can be decided whether

or not the act is to be defined by law as a crime. It is largely a question of what social interests are to be secured by criminal justice. This is a practical problem in the last analysis. Clearly, laws which cannot be enforced should not be made in the first place. Furthermore, if recognizable undesirable results follow the enforcement of a law, for one reason or another, it raises the question whether the behavior in question should be prohibited. Advantages and disadvantages may have to be balanced in determining the matter. Empirical investigation is certainly necessary if the mere hazard of guesses and uninformed opinion is not to decide the matter. Finally, the behavior content of the law will continue to be confused as long as the criminal law serves the inconsistent ends of social welfare, on the one hand, and primitive retribution on the other. That is still the situation today.¹

It is a well-known fact that not all of our laws are perfect. Actually, many of our statutes may at times cause hardships and injustice. It still remains true, however, that nothing is a crime unless the criminal law forbids and punishes it. The corollary of this is that no act is a crime which is not forbidden by law. The social judgment with respect to the act may be mistaken. Because this is always possible, laws may either have to be repealed or become dead by non-enforcement. Even though a law may not be strictly enforced because public sentiment is opposed to the law in question, the commission of the act proscribed by the law is nevertheless a criminal act in the eyes of the law. People selling a drink of alcoholic liquor the day before the repeal of the Volstead Act were, strictly speaking, violating a law and committing a criminal act. The day after repeal, the self-same act was no longer criminal behavior. Laws obviously should have the support of the current mores for otherwise they will be ineffective. Obsolete laws obviously should be repealed. Many of the so-called "blue laws" in some of our states are of this type. They represent the views of life current in another age rather than contemporary public opinion. Laws against blasphemy and witchcraft can still be found. Should we be prohibited by law from smoking a pipe in a New York public park? Is it not rather ludicrous to find that in one southern state a third successive failure to attend church is still a capital crime?

The result of such conditions is serious for society. A condition of demoralization of our legal system is threatened. Added to the mass of obsolete laws, new state laws, federal laws and municipal ordinances are being passed constantly. It is estimated that a quarter million new laws have been passed in the various states since 1900. President Hoover's Research Committee on Social Trends reports a growth of 40% in the number of criminal laws between 1900 and 1930. Is it any wonder that with so many laws in force every citizen may find himself unwittingly a law

¹ See J. Michael and M. J. Adler, *Crime, Law and Social Science* (Harcourt, Brace & Co., New York, 1933), pp. 23-26 and 352-361, for an excellent analysis of this problem.

breaker? Changing laws and regulations ostensibly put a strain on the citizen's power of adaptation. The more laws prohibiting this or that practice or form of behavior, the greater will be the number that will be broken. Society's task of making new rules and social regulations and revising outmoded, obsolete laws is and always will be a continuing one. The problem, therefore, of dealing with those unable or unwilling to conform to current legal standards will never grow less difficult or unimportant. The need at present is not merely "to pass a new law" but rather to be sure that modern codes of criminal law are adjusted scientifically to the modern, urbanized, industrial civilization of the America of today.

It becomes obvious that the concept of crime is not a static one. The group interests, which are expressed by legislators in the passage of laws, change with the passage of time. Accordingly acts which once were legally forbidden may cease to be crimes and other acts become crimes as laws are passed forbidding them. The concept of crime is therefore changing, variable and dynamic, and depends upon time and place. Each year thousands of new crimes are created by law. It is quite possible for a person to be doing something one day and find that similar behavior the next day or week had become criminal. So, too, crimes of one age may not be the crimes of another age. Warden Lawes of Sing Sing says that "it is estimated that 50 per cent of the criminal laws of today would have been regarded as approximating absurdity fifty years ago, and hundreds of the criminal laws of one hundred to three hundred years ago seem absurd now. English laws at one time forbade buying grain and other foodstuffs with an idea of selling them at a profit and prescribed death as a penalty. In Connecticut, at one period, any person who would 'deny God or His attributes' could be put to death. Laws that were in force in the United States during the recent World War are now regarded as having been unnecessary and in many instances ridiculous."² It has been estimated that of over 106,000 persons arrested in 1912 in Chicago over one-half violated laws which were not in existence twenty years previously.³ Not only do criminal laws vary from time to time, but they vary at the same period of time from one country to another, and even between political subdivisions of the same country. A crime in one state of the union may be an entirely legal act in another state and what is a crime in Philadelphia may not be a crime in Chicago.

Various lawmaking bodies also vary considerably in the penalties imposed for similar acts. For instance, the minimum penalty for burglary, first degree, in New York is imprisonment for fifteen years, and the mini-

² Lewis E. Lawes, *Life and Death in Sing Sing* (Doubleday, Doran & Co., New York, 1929), p. 7.

³ Quoted from the *Journal of Criminal Law and Criminology*, 5 173, in Nathaniel F. Cantor, *Crime, Criminals and Criminal Justice* (Henry Holt & Co., New York, 1932), footnote, p. 36.

imum for rape, first degree, is one year. In Texas, however, the minimum for rape, first degree, is fifteen years and the minimum for burglary, first degree, is two years. The maximum for rape in New York is twenty years whereas the maximum for rape in Texas is death. The penalty for larceny in Connecticut is four times as great as that for forgery, but in Kansas the penalties are exactly reversed. The lawmakers of New Jersey consider adultery a felony but those of New York rate it merely as a misdemeanor.⁴ Which of these lawmaking bodies was right? Warden Lawes, in commenting on these discrepancies, is of the opinion that some were unquestionably wrong, since crimes do not vary in inherent qualities as one passes across a boundary line from one state to another. It seems that these legislators were obviously guessing in the matter of deciding upon the proper penalties.

Crime, then, is a legal concept. A crime is any act which violates the law. Without a law forbidding an act there can be no crime in the strict sense of the word. Since laws vary from time to time, and from one period of history to another, crimes necessarily vary also. Morris claims that "there is no act, save possibly treason, that we now look upon with abhorrence as a crime that has not at some time or place been considered honorable. The killing of parents, the exposure of children, cannibalism, prostitution, adultery, polygamy, incest, nudity, slavery, theft, have all been permitted. On the other hand, many acts that we legally disregard, have been forbidden—Russia, Turkey and Persia have in times past forbidden the use of tobacco under penalty of mutilation or death. Confirmed bachelors were publicly scourged in Sparta. Detracting from the dignity of the sovereign, the crime of lese-majesty, was known to Roman and English law. The death penalty was prescribed in colonial Massachusetts for children above 16, guilty of smiting or cursing their parents. Obstinate persistence in heresy, idolatry, witchcraft and blasphemy were other capital offences in Massachusetts."⁵ We find too that nations and states of approximately the same cultural stage of development do not agree upon what acts are socially dangerous and harmful. France today does not consider prostitution a criminal act whereas the American states do.

Mistakes in legislation undoubtedly occur. Our legislators in passing laws are supposed to reflect public opinion and the prevailing mores of the country. This they may not do successfully either because of their natural limitations in knowledge or ability, or because they consciously fail to represent the voice of the people. There is no question that much legislation is passed rather in response to insistent propaganda and lobbying of small sections of the public than because of genuine concern for the general social welfare. According to Lawes, "legislators, as a rule, have little or no knowledge of the great fundamental problems involved

⁴ Lawes, *op cit*, pp 8 and 9

⁵ Albert Morns, *Criminology* (Longmans, Green & Co., New York, 1934), pp 7 and 8

in crime. They seem unable to formulate correctly a law from the standpoint of social and economic perspectives, and they seem to care little whether or not the penalty provided is a proper one"⁶ He is of the opinion that the entire criminal code needs to be re-appraised and built up law by law so that we may have really effective laws which would and should reach 98% of those who commit crimes instead of only about 2%, as at present. If crime, legally considered, is entirely a matter of definition by statute, the supreme importance of wise and careful lawmaking on the part of our legislators is apparent.

Kinds of Crime

The simplest classification of crimes is no doubt that of the English common law which recognized three classes of crime; (1) treason, (2) felony, and (3) misdemeanors. With the exception of the state of Louisiana we have followed the common law of England. Treason is still punishable by death in many of the states of the union. Since the crime of treason has become more or less obsolete in this country, it can be said that for all practical purposes the law in the United States divides crimes into two main classes, namely, felonies and misdemeanors. The difference in gravity of these offences is indicated by the comparative difference of punishment attached to each class. The Classical theory of punishment, that the punishment shall fit the crime, is clearly indicated in this practice.

Felonies are the most serious offences according to the law. Typical felonies are such crimes against the person as murder, manslaughter, or rape or crimes against property such as robbery, arson or larceny. They are usually punishable by a fine or by imprisonment for a year or more in a state prison, or both. Certain kinds of felonies are punishable by death. Misdemeanors are crimes of lesser seriousness and are punished by a shorter period of imprisonment in a local prison, usually less than a year, or by a fine, or both.

The original distinction between them was based on the methods of punishment. It was the penalty that accounted for the differentiation. In some of our states there is apparent a tendency to cease maintaining a clear-cut distinction between the two, and to class them both as offences or crimes. The distinction between the two is quite arbitrary. To consider one more serious than the other is now true only in a general sense. Were a man to steal \$100 in New York state he would be guilty of a misdemeanor but if he happened to steal one or two dollars over that amount he would be punished as a felon. The fact, too, that crimes classed as felonies in one state are considered to be merely misdemeanors in other states signifies the difficulty involved in trying to draw a real inherent distinction between them. Sutherland, who favors the entire abandonment of this classification, says that "the greatest objection to the classification of

⁶ Lawes, *op cit.*, p. 14

crimes as felonies and misdemeanors is that it is used, also, as a classification of criminals. The individual who commits a felony is a felon; the individual who commits a misdemeanor is a misdemeanant. It is assumed that misdemeanants are less dangerous than felons. But it is quite fallacious to judge the danger to the group from one act, for an individual may commit a misdemeanor one week, a felony the second week, and a misdemeanor the third. The acts do not represent changes in his character or changes in the danger to the group."⁷ Studies made with regard to the two classes show that more misdemeanants have previous penal experience than felons and exceed them as to their number of previous commitments.

The value of such legal classifications of crimes is related primarily to procedure in that the type of crime determines in large degree what punishment will be imposed upon conviction. This value, however, is not so clear if our thinking is divorced from traditional concepts concerning the purpose of punishment. Such classification does admirably fulfill the purpose of "making the punishment fit the crime." Should the aim be rather to secure social protection, little or no value can be claimed. Since the length of the sentence is still determined primarily by the nature of the act, society must release the prisoner at the expiration of his sentence regardless of his dangerousness to society at the time of his release. It is an open secret that annually large numbers of convicts again return to society actually more dangerous, more bent upon anti-social activities, more hardened in their criminal philosophy of life than they were at the time of their incarceration. As long as society relies solely upon the objective test of the nature of the act in determining the nature and length of treatment to be accorded to a person convicted of crime, no real social protection can be expected. The condition of the criminal rather than merely the act committed would seem to be a more scientific basis to judge the kind and length of treatment he needs in the prison. The crime itself is after all but one index of many of the offender's condition.

Elements of Crime

There are two elements in a crime—wrongful intent and wrongful act. If either of these is lacking, no crime has been committed. Both an overt act and a culpable intent, then, must be proved in a case of violation of the criminal law.

The act alone therefore does not necessarily mean criminal behavior on the part of the doer. One may swerve off the road in an automobile to avoid a collision with an on-coming reckless driver, and as a result run down and kill a child on the sidewalk. In such an instance, no charge of murder can be brought against the driver because no criminal intent was involved in the act. On the other hand, there may be murderous intent

⁷ Edwin H. Sutherland, *Principles of Criminology* (J. B. Lippincott Company, Philadelphia, 1939), p. 20.

present when a person hits another in a moment of rage. If he happens to have in his possession a rolled-up newspaper instead of a heavy club at the moment of striking, no serious damage is done. The intent of murder was undoubtedly present but did not result in the act of murder. Of course, the charge of assault may be lodged against the assailant. The wilful intention to kill, however, was of no consequence because it was not accompanied by the act.

The difficulties involved in establishing the presence or absence of criminal intent in a trial case are considerable. What is to be the criterion—a subjective or objective one? Can intent be inferred better from the subjective statements made by the defendant than from the objective circumstances of the case? There are contradictory rulings on this point. Courts sometimes rule the criterion is subjective, sometimes objective.

The mere fact that a person does not know that an act is forbidden by law does not absolve him from possessing the necessary guilty mind. While it is inconceivable that anyone in our civilization does not possess the legal knowledge that one can marry one but not several wives, if the latter marital adventure is undertaken by any man so inclined in America, he is guilty of a crime. Because he did not know better or because he did not have an evil intention, in the broad meaning of that term, hardly excuses his action. The fact is that he did intend to do something which the law of the land specifically prohibits, no matter what his motive may have been. Children and insane people, however, are not considered by the law to be mentally capable of entertaining a criminal intent. The law does not consider them guilty, therefore, of having committed a crime.

The Extent of Crime

How criminal a nation are we? Would that this important question could be answered accurately, but this is not possible. The only statistics of crime for the entire United States are those collected by the Census Bureau decennially with regard to prisoners. These are the best figures we have but they cannot be considered to be a reliable index of American crime. The only other statistics available are those published by state and local agencies. How correct or incorrect these may be is not known. Thus, we can only approximately determine how much crime there is in America. Such figures as we have after all tell us only how many persons in a given period were convicted and sent to various penal institutions. How many were charged with crime but not convicted? How many convicted persons had their sentences suspended or were put on probation? How many escaped sentence through legal trickery? How many cases were "fixed"? How many times was there failure to arrest when a crime was reported? There is no question that a great number of crimes are concealed. Is it any wonder that crime statistics are so unreliable or that they do not really represent a true index of the amount of actual crime in the country?

It has been roughly estimated, however, that each year in this country about four or five million persons are arrested, of whom about 40% are found guilty. About 10% are committed to penal institutions while the rest of the guilty are fined or put on probation and the like ⁸

The homicide rate in the United States is unquestionably much higher than that of Europe. According to Sutherland, the average rate in 31 American cities is 10.8 per 100,000 population whereas that of Amsterdam is only 0.3, that of Liverpool 0.6, Berlin 1.8, Prague 1.9, Vienna 2.7, Brussels 3.3 and that of Rome, 4.4.⁹ He attempts to excuse the American rate as being probably due in part to the fact that there are more excusable or justifiable homicides in America and that many are due to American automobile driving.

It is evident that ordinary crime statistics fail necessarily to indicate the true picture regarding criminality. All too many offences are never prosecuted. These may be crimes from the legal standpoint but prosecution may be avoided because those involved are prominent figures in the political or financial world. It is quite possible, too, to obey the letter of the law while actually violating its spirit, so that no crime in the strictly legal sense has been committed. A failure in the development of a social, ethical code, both on the part of the offenders and of the general public, accounts for such failures to prosecute. While kidnapping or robbery are outlawed by existing codes of behavior, theft by fraudulent advertisements, for instance, is not yet as definitely prosecuted. The mores and legal codes should be as decisive with regard to the latter as to the former.

The present extent of fraud in the United States is as socially dangerous as it is difficult to reveal from mere statistics. At least the principle of "caveat emptor," which has for such a long time largely protected cases of misrepresentation and fraud from prosecution, no longer holds with regard to securities. President Franklin D. Roosevelt has insisted that the principle of "caveat venditor" be the rule now. Fraud in personal injury cases is extensive, principally because of the activity of a well-known type of lawyer, the "ambulance chaser." The fraud in these cases is seldom prosecuted by insurance companies, for their own hands may not be clean.

Bribery is likewise a prevalent crime with very few arrests made. Bribery of public officials is a crime for both parties concerned. In our cities and states bribery is all-too-common when supplies are purchased, when roads and public buildings are constructed, school books purchased and the like. This is where the wealth of many public officials comes from. Bribery in private business is very prevalent. Buyers for department stores or hotels, for example, where purchases on a large scale are made, frequently accept or expect bribes. Such devious, anonymous crimes of the business or

⁸ P. W. Paustian and J. J. Oppenheimer, *Problems of Modern Society* (McGraw-Hill Book Company, Inc., New York, 1938), p. 123

⁹ Sutherland, *op. cit.*, p. 34

political world may arouse our antagonism but it is futile unless it can be directed against identifiable persons rather than the system as a whole. The prosecutions of a Samuel Insull for fraud and embezzlement, of a Richard Whitney, former President of the New York Stock Exchange, or of a powerful Tammany boss like James J. Hines, hired protector of the Dutch Schultz policy racket, are exceptions rather than the rule. Our conclusions regarding the prevalence of criminality in America obviously dare not be limited to statistics of crime. Crime is much more prevalent than even these alarming figures indicate.

This is not to say, however, that crime in our country has been increasing to such an extent that we are being engulfed in a "crime wave;" there is no basis in fact for such an alarming assumption. The reason the average citizen so firmly believes that a "crime wave" exists is because the American press constantly "plays up" crime in order to furnish the human-interest material that sells newspapers. The emphasis on racketeering and other forms of organized crime, which, it is true, has been an increasing phenomenon in our civilization, distorts the whole picture of crime in America. Machine-gun battles between the police and desperate criminals do not occur daily as a normal incident of life in our big cities. Every sensational crime gets head-line treatment. Loss of perspective in the whole matter results. The "crime wave" is largely a state of mind and not a fact.

President Hoover's Research Committee on Social Trends presents a trustworthy opinion on this matter of "crime waves." No support is given the belief that an immense crime wave has engulfed the United States. The number of arrests and of court cases per 100,000 population did increase moderately from 1900 to 1930, with a tendency to rise more rapidly after 1920 than before. A large part, however, of the increase in the last decade was due to traffic cases, which increased at approximately the same rate as automobile registrations. Arrests and prosecutions for major crimes increased even less rapidly than the rates for minor crimes. A level for many in the series was reached about 1925. Prosecutions in federal courts were fairly constant from 1900 to 1917. An enormous increase occurred after 1917 largely because of the number of liquor cases. Federal cases, also, reached a level about 1923 without any significant change since that date. The record of crimes known to the police, which is potentially the best index of the number of serious crimes, was slightly lower in 1931 than in 1930. The committee concludes that these figures do not indicate that crime has swept over the country like a tidal wave. Rather the movement of these indices resembles the gradual rise of the level of a body of water.

Our American crime rate indicates a serious situation but it is not a recent phenomenon, nor has it developed suddenly. Actually it has existed for a generation or more and rather as a chronic social ailment. Many social factors are related to this condition, such as the heterogeneity of our population, our intense American individualism, our mobility, rapid growth

of cities, the very rapidity of social change in a country of such great size, with consequent breakdown of customs and the attempt accordingly to control behavior by law in place of custom. Add to these the prevailing inefficiency in the administration of criminal justice and the striking lack of police control in America as compared to that found in Europe, then perspective with regard to the crime situation in America begins to appear. Our present problem of attempting to control crime in this country has its roots in the development of our civilization; it is hardly a new situation that we face. It is to be expected, however, that the American public will continue to rediscover periodically "the existence of a crime wave."

The Cost of Crime in the United States

Only approximate guesses are possible with regard to the cost of crime in this country. Typical estimates of recent years are as high as \$13,000,000,000 by the Baumes Commission in 1928 and \$16,000,000,000 by the White House Conference on Child Health and Protection in 1930. The relatively conservative estimate of the Baumes Commission would represent a tax of approximately \$464 for crime on every family in the land. There is no question that criminality is a heavy financial burden on the community.

Between 1929 and 1931 an intensive investigation of this whole matter was made by the National Commission on Law Observance and Enforcement, George W. Wickersham, chairman. The results were published in 1931 under the title, "Report on the Cost of Crime" (U. S. Government Printing Office, Washington, 1931) A vast mass of data was compiled. The following are some of the important findings of this study:

Federal cost of criminal justice	\$ 52,786,000
State police forces in eleven states	2,660,000
State penal and correctional work	51,720,000
Cost of criminal justice in cities of over 25,000	247,700,000
Private watchmen	159,000,000
Armored cars	3,900,000
Cost of insurance against crime	106,000,000
Insured losses because of crime	47,000,000
Loss of productive labor of prisoners and law enforcement officers	300,000,000
Forgeries	40,000,000
Losses because of fraudulent use of the mails	68,000,000

The authors of this report concluded that no lump sum estimate of the aggregate annual economic cost of crime to the United States, which would be approximately correct, is possible. Lack of precise knowledge on this point does not obscure the fact that there is imperative need to reduce the enormous wastage represented by our crime bill.

Crime, of course, is not limited in its destructiveness to property only. There are also the more intangible, indirect costs. The cost of crime in terms of human tragedy and human suffering is just as appalling. The tragedy involved in a homicide cannot be included in statistics of crime. The evil results of corruption in political life are intangible but real. Criminal libel and rape must be considered in terms of psychic rather than material costs. The demoralization of the life of the criminal himself, the ruin of personalities, the shame and despair of relatives of convicts are all part of the havoc that is wrought by crime. The waste and loss involved in the necessity to keep a large body of men employed in the sole business of crime suppression, a non-productive enterprise, must also be reckoned in the cost of crime.

Who Is a Criminal?

Who, then, is a criminal? There is no question that in the popular mind there has crystallized a fairly definite notion as to what a criminal looks like. The reader of detective stories and the movie-goer knows what crooks and villains look like, or should look like. The stereotype of the typical criminal is pretty definite in its outlines—low receding foreheads, beady furtive eyes, thin tight lips, massive protruding jaws, large ears, a huge body with unusually long hairy arms and legs. There you have him—the born criminal. Does this picture correspond with reality? Warden Lawes of Sing Sing, who has been in contact with convicted criminals for over a quarter of a century, claims he has never seen a prisoner who in reality corresponds to this common picture of the criminal.

This idea of the born criminal, of a criminal type which could be recognized by so-called "stigmata of crime" and foredoomed to crime by his atavistic physical make-up, was the special theory of the famous nineteenth century Italian criminal anthropologist, Cesare Lombroso. This myth of the born criminal, exploded by the results of more recent scientific research, nevertheless persists in the popular mind. Thomas Mott Osborne of Sing Sing fame, Clarence Darrow, famous criminal lawyer, Warden Lawes of Sing Sing, as well as other distinguished American penologists, deny the reality of this myth. As Warden Lawes has said: "Show me an American who looks like Uncle Sam or an Englishman who looks like John Bull and I will grant the possibility of finding a man who looks like the so-called typical born criminal." There is, then, in actuality no such thing as *the* "criminal."

As a matter of fact, since crime is not peculiar to a specific type of human being, we come to the logical conclusion that criminals are persons who are much like the rest of us, with one exception—they broke the law. The fact still remains that law determines the crime and hence the criminal. This means that such a person is in reality a criminal whether or not he is convicted of his crime or, even, whether the act is known to anyone other

than himself. As Warden Lawes has said so trenchantly "Anyone who steals, be it a five-cent apple or a fifty-dollar bill, a watermelon or a car, a handkerchief or a fur coat, has committed a theft and is, in the real sense of the word, a criminal, regardless of whether or not he or she is ever tried and convicted, just as much as the man who commits a murder is a murderer and a criminal even if never apprehended and convicted."¹⁰

Criminality, of course, would remain in serious doubt unless it has been officially determined by legal process. So the most definite and certain criterion for distinguishing criminals from non-criminals is on the basis of conviction or non-conviction of a crime. This is not to say that all persons who have been convicted of crime are criminals. It is obvious, too, that not all criminals are convicted of their crimes. Even though conviction of a crime may be inadequate in certain respects as a test of one's criminality, nevertheless there appears to be no other way certain enough to establish the fact of criminality from either a practical or scientific standpoint.

It appears, however, that a strictly legal interpretation of crime and the criminal has serious limitations from the sociological point of view. By it one is unable to recognize the criminal by his own characteristics. This creation of a crime and, hence, the criminal by legal fiat fails to explain satisfactorily what subtle change, if any, has taken place in a person so that one day his behavior is considered to be that of an entirely normal person and the next day, the act having been forbidden by law, he finds himself mysteriously stigmatized as a criminal. The legal emphasis as to what makes a person a criminal is concerned with the act, the sociological emphasis would go beyond the act to the doer to find the real inwardness of a criminal's "criminality." If a real change has occurred in the individual's standard of values, if his standards of right and wrong are in serious conflict with those of society at large, if he fundamentally rejects those values that govern the behavior of most citizens, if his definition of the situation is strikingly at variance with that of the law-abiding population, then one senses he is coming in contact with the personality of a real criminal. A person who unwittingly breaks a law is a criminal in the legal sense; from the sociological point of view, he is a pseudo-criminal. The real criminal, sociologically considered, is the habitual offender, the confirmed social deviate, who refuses to play the game of life according to the established rules of the game. The real criminal is he who breaks the law from habit, who deliberately and consistently disregards social values as defined by society and constantly behaves in such a way as to endanger these values. His constant law-breaking is confirmatory evidence that he is a rebel against the traditional and generally accepted definitions of society at large. He is unadjusted to the demands of the social code of the larger group; he is, however, very well adjusted to the code of behavior of

¹⁰ Lawes, *op cit*, p. 23.

another, smaller group—the criminal gang, whose values he accepts, and he accordingly motivates his conduct according to this group's expectations. This matter of values is fundamental. Real criminals constantly menace by their illegal and anti-social behavior the nexus of social relationships by which society lives.

We usually think of these real habitual criminals as belonging only to the underworld. There are, however, criminals of the so-called upper world as well. Professor Morris has done a real service in pointing out that the gangster and racketeer of the underworld has his counterpart in the upper strata of society. "The phrase criminals of the upper world is suggested to define that numerous but never clearly identified group of criminals whose social position, intelligence, and criminal technique permits them to move among their fellow citizens virtually immune to recognition and prosecution as criminals. Between them and their upright fellow-citizens there is no chasm, but only a broad gray zone that shades insensibly into the black and the white on either side of it. In this shadow-land are non-criminals whose ethical standards are more or less debatable, and among these many near criminals who, although keeping within the law, operate in a manner that would suffer by comparison with the open law breaking of pickpockets or prowlers" ¹¹

He lists twenty-three examples of the criminals of the upper world to show the range and importance of their activities. The following are taken from Professor Morris' list: (a) "usurers, such as pawn brokers and loan sharks charging interest illegally at rates varying from 250 to 5,000 per cent a year on loans totalling well over a billion dollars a year." (b) "Operators of bucket-shops who take their customers' money for the purchase of securities, but who frequently do not buy them at all" (c) "Bankers who peg prices to maintain them at unwarranted levels until securities can be unloaded upon a gullible public." (d) "Operators who pyramid stocks through holding companies to the point where the paper value of the securities (sic) issued is many times the actual value of the basic property" (e) "Directors who use inside information to make profits at the expense of the stockholders in whose interest they are presumed to be working." (f) "Manufacturers . . . who take advantage of a virtual monopoly control over natural resources, processes or inventions to gouge customers to the limit of their willingness to pay" (g) "Manufacturers who sell goods such as cosmetics, toilet articles, preserves, patent medicines, some of them useless, adulterated, or harmful, at many times their value through clever but misleading high pressure advertising." (h) "Grafters in political offices who seek and receive pay for doing a thousand and one legitimate and illegitimate favors" (i) "Employers who exploit the labor of women and children in industry contrary to law" (j) "Contractors and builders who substitute materials inferior to those called for in the specifications in order

¹¹ Albert Morris, *Criminology* (Longmans, Green & Co., New York, 1934), pp. 153-154.

to increase their margin of profit." (k) "Law enforcement officials who break laws in order to enforce others, as, for example, the common use of the so-called 'third degree' as a means of securing evidence or confessions" (l) "Government officials who deliberately use untruthful, misleading, and fraudulent propaganda to stir the people to a particular course of action." ¹²

Professor Morris shows that not only are these criminals of the upper world difficult to identify because we tend to limit the appellation, criminal, to the underworld criminals, "the day laborers in the field of crime," but he also emphasizes the fact that these criminals of the upper world are real, numerous, and near at hand. He thinks it is likely that they are more costly economically and may possibly be more of a menace to society in every way than their counterparts of the underworld. He concludes his discussion by saying "Certainly the matter of upper world crime deserves serious study as an authentic part of the crime problem. Possibly little can be done with it short of fundamental changes in general social attitudes such as, for example, a new economic perspective in which the competitive struggle for wealth will be secondary and will seem less desirable than a cooperative struggle for human welfare." ¹³

The criminals of the underworld, the professional criminals, the racketeers and gangsters, are rather more familiar figures than the criminals of the upper world. Their serious crimes challenge public attention. When one of their number is successfully convicted of a crime the public sighs with relief. An Al Capone in Alcatraz is one less public enemy to be reckoned with. Crime is a career with this type of law breaker. It is a way of making a living and success or failure in the undertaking is measured by the degree of monetary return.

The following case indicates the prevailing attitudes toward the various types of "rackets" as compared with regular employment by youths in an Italian neighborhood. "When an ex-convict returned to Chicago from Joliet four years ago at the age of twenty-five, one of his first observations was that bootlegging had made many of his neighbors rich. 'Every Wop has got a car in front of his home.' Young hoodlums had been given opportunities in various rackets through connections and influence with resourceful chiefs—one was a gambling house manager, others were employed as a bootleg convoy, another was running a successful 'fence' for stolen goods and others had political jobs. He discussed with his friends the chances of securing a legitimate job while he remained on parole. One of them finally asked him: 'Do you really have a yen (ambition) for being a poor working sap?' His ironic answer was, 'Yes, my father worked as a laborer for twenty-seven years. He is all worked out now and his boss is going to pin a medal on him.' " ¹⁴

¹² Albert Morris, *Criminology* (Longmans, Green & Co, New York, 1934), pp 154-156

¹³ Albert Morris, *Criminology* (Longmans, Green & Co, New York, 1934), p 158

¹⁴ John Landesco, "Organized Crime in Chicago," *Illinois Crime Survey*, Part III, p. 1046

Thus it is that the youthful gangster makes invidious comparisons between the opportunities for success in criminal versus so-called legitimate careers. His criminal career becomes a way of life as well as a means of livelihood. "The gangster grows to consider the world a place in which everyone has a 'racket' but the 'poor working sap.'" ¹⁵

The Illinois Crime Survey draws the following conclusion: "It follows that the gangster is a product of his surroundings in the same way in which the good citizen is a product of his environment. The good citizen has grown up in an atmosphere of obedience to law and of respect for it. The gangster has lived his life in a region of law breaking, of graft, and of 'fixing'. That is the reason why the good citizen and the gangster have never been able to understand each other. They have been reared in two different worlds." ¹⁶

The professional criminal who pursues a criminal career with a great degree of consistency is rather a different kind of criminal from the occasional or accidental criminal or from the criminal of passion. The latter act more as individuals, their crimes are not numerous. With regard to the habitual, professional criminals, however, society is dealing with a group rather than merely with an individual. Society at least is confronted with individuals whose behavior is a response to the expectancy and approval of a group. As Tannenbaum says concerning them: "The issue involved is not whether an individual is maladjusted to society, but the fact that his adjustment to a special group makes him maladjusted to the large society because the group he fits into is at war with society. . . . The question is not how a criminal is distinguished in his nature from a non-criminal, but how he happened to be drawn into a criminal group and why that criminal group developed that peculiar position of conflict with the rest of society. The important facts, therefore, are to be sought in his behavior history." ¹⁷

Most of these professional criminals never get old. They usually die by violence as they have lived by violence and under the shadow of constant fear. The rhythm of their life seems to be one of alternation between feverish war and depredations on society and periods of imprisonment. If an early death does not cut short the career of crime, they will be constantly hounded and hunted down by the law, only to end their days in the penitentiary. But so strong is their habituation to this mode of life, that once started on such a career of crime few escape from it for the rest of their life.

The hardened criminal's isolation from the larger social group is, then, a striking fact. As we shall see later, the origin of this isolation is connected with his early association with a boys' gang, organized as a conflict group. The professional criminal's life eventually results in what Tannenbaum

¹⁵ Landesco, *ibid*, p. 1048.

¹⁶ *Ibid*, p. 1057.

¹⁷ Frank Tannenbaum, *Crime and the Community* (Ginn and Company, Boston, 1938), pp. 8 and 9.

calls a "warrior's psychosis." His attitude toward the world is typically that of a warrior. He is ruthless towards his enemies or traitors and extremely loyal towards his companions in crime. His philosophy of life, born of conflict, has its strongest motivating force in fear. As Tannenbaum describes it,

He is afraid of the police, he is afraid of his enemies. He is afraid of the "rat," he is afraid of the "good" citizen. All around him are active or possible enemies. The world is organized against him. There can be no peace, no quiet, no security, no faith, no loyalty, that is not tinged with an element of distrust. His best friends, his wife, his sweetheart, his companions in crime, are all possible enemies. He may be destroyed by any one of them. A friend may weaken, or may be bought, jealousy, revenge, suspicion, hate, are elements out of which life is woven. That makes the little group among whom life is lived, and is liveable because there is some confidence, a more tenaciously held group than the ones known outside. The little group stands between the criminal and the world of enemies; it is the protecting wall against the tide that would engulf him. Here is the reason for the criminal's loyalty to the gang he can trust. Like other human beings, he seeks for security, for recognition, for adventure, for love, in this world, but he attempts to find it through the medium of a small group, not in the world.¹⁸

The meaning of such a crime career as it unfolds itself in the lives of individuals is indicated by the following: "Edward, who is now in prison serving his third sentence, began his delinquent career when he was eleven years old. He was an active member of the White Hand, junior gang. This junior gang imitated an older gang known as the White Hand. Eighteen years ago the members of this White Hand gang were as notorious as any of our present gangsters. Another gun man, leader of a rival gang, shot the leader of the White Hand gang. At least one of the members of the White Hand gang was sentenced for murder, did a 'ten year stretch' and was released only to be poisoned by his mistress. Edward says that ten members of the White Hand Junior gang are now in prison where he is an inmate as 'stick-up' men, for carrying concealed weapons, another one has recently been tried for murder."¹⁹

These outlaws from society live lives where their periods of freedom are interludes between prison sentences. In prison, out of prison, more crime, re-arrest and so on indefinitely unless the career is brought to an abrupt end by violent death at the hands of the police or of one of his own kind. Older professional criminals are few because few of them live long enough to reach maturity.

The sole, all-embracing criterion of criminals is that they have been found

¹⁸ Frank Tannenbaum, *Crime and the Community* (Ginn and Company, Boston, 1938), p. 179.

¹⁹ Quoted from the New York Crime Commission, 1928 Report, p. 350, in Tannenbaum, *ibid.*, pp. 117-118.

guilty of violating the laws of the land. Beyond that point it is unsafe to generalize as between criminals and non-criminals. The most recent studies of delinquents and criminals arrive at the conclusion that there is no distinctive type of criminal. Perhaps this question of being able to identify an evident criminal type can best be concluded by the following account of an attempt to do so. "In a conversation with Sir Edward Henry, the head of Scotland Yard, he was asked 'if there is a distinct criminal type, a separate marked class of men.' Without hesitation his answer was, 'No, there is not.' Then he told of an expert who came claiming ability to detect a criminal by his face. To him were handed two photographs, one of them a picture of a professional criminal. The expert pointed confidently to one, saying, 'This is a criminal.' With a twinkle in his eye Sir Edward said that the photograph thus pointed out was that of a bishop in the Established Church."²⁰

Criminals are truly of all kinds. The calling of certain criminals murderers, thieves and the like is not particularly enlightening for there are all kinds of murderers and thieves who commit their crimes for quite different reasons and under the influence of widely varying circumstances. So, too, there may be different kinds of criminals whom we call "racketeers" or "gangsters." These in turn must be kept distinct from the first offenders, who are hardly alike in turn. A youngster who steals a car to take a joy ride is hardly similar to an older first offender who attempts to hold up a bank. The specialties of professional criminals vary from directing vice rings to "number rackets" and strikebreaking activities.

It is the purpose of criminology to try to understand these different kinds of violators of the criminal code whom we stigmatize as criminals. To do this it will be necessary to examine the interplay of forces, individual and social, those within and those without the criminal person, which condition criminal behavior. This will involve an examination of the society in which these social deviates are born and raised and also knowledge of the formation and development of the criminal's personality make-up.

²⁰ Quoted from *The Outlook*, 97 404 (Feb. 25, 1911), in F. E. Haynes, *Criminology* (McGraw-Hill Book Company, Inc., New York, 1935), p. 36.

CHAPTER 50

THE SEARCH FOR AN UNDERSTANDING OF CRIMINAL BEHAVIOR

Early Theories Concerning Criminals

The physical sciences give abundant proof that control in the material world can be achieved only after scientific knowledge of the forces at work in nature has been gained. Man has applied his scientific findings with increasing effectiveness in the last century. His resulting control over nature, due to his knowledge of natural phenomena, has ushered in an era of unprecedented, material progress. The truth embodied in this experience of the physical sciences has not been equally applied with regard to crime. It is axiomatic that adequate control of behavior must rest on a knowledge of the factors or forces which produce behavior. Only by a scientific determination of conduct and a comprehension of the social and psychological conditions involved in behavior can control be established. Today, as never before, is this endeavor being forwarded by the joint efforts and studies of physiologists, biologists, psychologists, psychiatrists and sociologists.

The theories that have been held concerning criminals and their behavior in various stages of social evolution have been closely related to the state of cultural development of the time. The first theory concerning criminal conduct was that of diabolical possession and instigation. Evil spirits were considered to be the cause of a man's strange, unsocial behavior. The Salem witchcraft delusion indicated clearly this point of view. Indictments for witchcraft charged the defendant with "being moved and seduced by the devil". People who were supposed to be innately depraved and instigated by the devil in their actions could not expect to receive any understanding and hence no mercy. Torture and death for these unfortunates were the order of the day. It is interesting to note that as late as 1862 the Supreme Court of North Carolina declared: "To know the right and still the wrong pursue proceeds from a perverse will brought about by the seductions of the evil one."

In general, it may be said that the various schools of philosophy regarded human actions as the result of conscious choice, which could be misled by wrong thinking or lack of harmony in the individual's character. The coming of Christianity produced a great change in the thinking of the ancient world. New Testament theology introduced the dogmas of sin and redemption into the existing theories of good and evil. Rewards and punish-

ments on earth corresponding to those promised the soul in the future life were emphasized. The Hebrew philosopher Maimonides, prominent in the mediaeval period, recognized the fact that a system of reward and punishment presupposes the existence of freedom of the will.

This conception of individual responsibility, that the criminal is responsible for his crimes and misdeeds, did not prevail until it was introduced into criminal law by the Christian Ecclesiastical Law. It is still a basic idea in contemporary penal philosophy.

During the historical period when these explanations of crime were accepted, the conception of natural causation had not influenced thinking even with regard to such things as physical disease, and, of course, hardly the phenomenon of criminal behavior. Possible causative factors, attendant circumstances of the crime, the criminal's motives or intentions were disregarded. During the mediaeval and early modern period when the conception of natural causation was not yet understood, it is not surprising to find that dumb animals, insects, and even inanimate objects were considered and treated as criminals, solemnly tried by the courts, duly convicted and punished. To illustrate: "If an ox gore a man or a woman that they die, then the ox shall be surely stoned and his flesh shall not be eaten; but the owner of the ox shall be quit."¹ We read too, for instance, of a hog that had been found guilty of crime in the courts of France and was pardoned by the king on account of its youth. Thus unutterable cruelties and absurdities were committed upon violators of the legal code. Punishments were notoriously arbitrary and unequal. The general idea seemed to be to heap "tortures on criminals in accordance with the divine example, and of relying on divine interposition as the sole method of reformation."² There being no uniformity in dealing with law violators, with variations in this respect being as wide as the differences in the judges themselves, justice in the application of current conceptions was obviously defeated. It was out of this situation that the Classical School of Criminology at length arose in the eighteenth century.

Schools of Criminology

The Classical School represents the influence of the general intellectual development of the eighteenth century much as do the political theories that were associated with the French and American revolutions. The way criminals were treated was one of the evils attacked by the eighteenth century philosophers in France, Montesquieu, Voltaire and Rousseau. It remained for Cesare Beccaria (1735-1794) to gather their ideas on crime and state them in his book, *Crimes and Punishments*, published in 1764, to mark the beginning of this School of Criminology. The book was written

¹ *Exodus*, XXI, 28.

² Edwin H. Sutherland, *Principles of Criminology* (J. B. Lippincott Company, Philadelphia, 1939), pp. 49-50.

from a humanitarian point of view. It represented a definite indication of revolt against the traditions and practises of the dark ages with regard to the inequalities and the cruel and inhuman punishments which were still prevalent and the arbitrary and discriminatory power which judges exercised in imposing sentences.

To correct these abuses of a despotic society, the Classical School postulated the following ideas which dominated nineteenth century penal codes and systems of procedure. The doctrine of free will is its basic tenet. Because a man is free to choose his acts he is morally and hence legally responsible for his acts. Because a person has willed to commit a crime he is to be punished. The psychology of the School is hedonistic. The pleasures and pains of an act are supposedly calculated in the making of a free choice. This intellectualistic psychology represented the final word in explanation of the causation of crime. No possibilities of a further search for causes of crime could be imagined.

These ideas applied to penology, with the purpose of making punishments less severe and arbitrary, assumed that all criminals, like all men, were alike. Therefore all men who break the law must be treated exactly alike. Any person who breaks the social contract (Rousseau) deserves to be punished. The punishment should inflict sufficient pain as to exceed any pleasure derived from the act. Identical punishments for the same act to all persons were calculated to preserve the rights of individuals. No longer could a judge exercise arbitrary powers in sentencing law breakers. His function now was only to decide whether the law had been violated and pronounce sentence as provided by the law for that particular offense.

The fundamental theory of the Classical School is that the crime, and not the nature of the criminal, should determine the treatment of the criminal. In other words, it dealt with crime as an abstraction. The abstract and doctrinaire thinking of the period is reflected in its attempt to decide the matter of punishment as a problem in exact justice and without reference to the variety of living human beings involved so intimately in the whole problem. Insane persons, imbeciles, minors, first offenders and hardened criminals were still put on the same footing.

While we today may criticize the Classical School as being harsh, nevertheless it was humane in view of the environment from which it sprang. Even a system which disregarded in its ideas of punishment, youth, mental disease, attendant circumstance and the like in attaching blame-worthiness and fixed penalties to acts, was an advance and real reform as compared to the frightful cruelties and injustices against which it was directed.

Beccaria's ideas were worked out in detail by legislators and embodied in the French code of 1791. The attempt to administer this code was found to be an impossible task. Accordingly, in the code of 1810 no longer was it attempted to define all grades of crime with an invariable punishment attached to each. The judge was now given discretion to vary punishments

within minimum and maximum limits set by law, but in doing so he was not allowed to recognize subjective circumstances. In both of these codes the act and the injury to society resulting from the criminal act still were the sole determinants of punishment, regardless of whether the one who committed the crime was insane, an idiot or a minor.

As classical theory came in contact with reality, it was discovered to be impracticable and contrary to reason and experience. Reason showed that children and mentally defective persons were obviously not responsible in the same degree as normal adults. The suggestions for change that arose finally resulted in the rise of the Neo-Classical School.

The doctrine of responsibility based upon the theory of free will, as held by the Classical School, was still retained in the Neo-Classical School. The development of scientific thought and public sentiment in the nineteenth century refused to accept any longer the fallacies of Classical doctrine and the resulting cruelty of punishment to insane persons, imbeciles or children. The differences in persons had to be taken into account in punishing. Hence, the Neo-Classical School came to recognize extenuating circumstances in the criminal himself when deciding on punishment. Minors are regarded by the school as being incapable of crime because they have not reached the age of responsibility, and those who are insane or imbecile at the moment of their criminal act are considered irresponsible and hence not capable or only partially capable of committing a crime. In their condition they are not regarded as free to choose. According to the theory of this school, the degree of responsibility of the violator of the law determines the punishment in the case.

During the century after Beccaria, man's knowledge of himself was enormously increased. Biology advanced rapidly as a science. Malthus' ideas regarding the forces controlling population growth stimulated thought. Darwin's concept of evolution gained ground and the idea of causality in the field of human relations came to be recognized through the influence of Spencer. In the field of statistics, Quetelet showed that man's conduct varies predictably in response to the influence of the environment. Psychiatry, an embryo science, was beginning to command much attention.

Criminology needed only a thinker who was a product of this age of scientific development to see the implications of this new knowledge for the further understanding of the criminal. Cesare Lombroso (1836-1909), an Italian physician and anthropologist, was the man who brought the scientific contributions of his time to a focus. He, together with Ferri and Garafalo, founded in the 1870's a new school of criminology, the Positive or Italian School. He is considered to be the founder of modern criminology.

It was natural that with Lombroso and his followers earlier theological and metaphysical interpretations of the causation of crime should be abandoned in favor of studying the criminal himself in order to understand the causes of his crime. This insistence of the Positivists on the study of the

individual criminal is the outstanding contribution of the school. By turning attention from crimes to criminals the basis of individualizing the treatment of criminals was established

The publication of Lombroso's *L'uomo Delinquente* in 1876, wherein he presented the results of his studies of the anthropological characteristics of prisoners in Italian penitentiaries, represented a decided break with Classical theory. Lombroso regarded the criminal "as an atavistic phenomenon reproducing a type of the past." Going back in his studies to savages, animals, and even plants, he found among them what he called "the equivalents of crime." These are characteristics normal to these strata of life but which become criminal when reproduced in civilized society. Examples are such practises as "murders" of insects by plants, infanticide or cannibalism among animals, homicides such as infanticide or murder of the aged which are prevalent practises under social sanction among savages.

In studying the skulls of criminals Lombroso found a great number of anomalies. These he compared with savage and prehistoric skulls and concluded that some of them were of an atavistic character. Together with about a dozen other criminologists, he made an anthropometric and physiognomic study of 5907 criminals. He came to the interesting conclusion that "in general, many criminals have outstanding ears, abundant hair, a sparse beard, enormous frontal sinuses and jaws, a square and projecting chin, broad cheek bones, frequent gestures, in fact a type resembling the Mongolian and sometimes the Negro."

Besides these physical anomalies, he concluded that physiologically criminals are similar to primitive men in being less sensitive to pain, owing to the prevalence of tattooing among savages and criminals. He assumed that their moral insensibility corresponded to their physical insensibility, the one being the result of the other. Psychologically, he found the criminal to be vain, vengeful, lacking in foresight, unstable, lazy, lascivious and devoid of pity.

It was thus that Lombroso, in his book on criminal man, described the character of the born criminal. He believed that the born criminal and the moral imbecile showed similar characteristics and hence indicated an identity of the two. He also assumed a similar likeness between the born criminal and the epileptic. On the basis of these two analogies, he came to regard the born criminal not only as an atavistic phenomenon reproducing a type of the past but also as a case of arrested development and disease.

Lombroso's ideas were sharply criticized both within and without the Positive School. There is no question that his picture of the born criminal represented too sweeping a generalization, based on insufficient evidence. Lombroso himself eventually modified his ideas on the basis of further research. The theory that the criminal is an atavism physically has had to be given up. There is no such thing as a definite criminal type. Anyone who is a defective, criminal or otherwise, shows these "stigmata of degenera-

tion" to a certain extent. Lombroso's "born criminals" are actually mental defectives who happened to become criminals instead of paupers, or inmates of mental hospitals or institutions for the feeble-minded

The publication in 1913 of Dr. Charles Goring's monumental research work, *The English Convict*, in which more than three thousand consecutive admissions to English prisons over a period of about eight years were carefully studied and measured as to various physical traits and compared with the measurements of non-criminals, effectively disposed of the Lombrosian idea of a criminal type which was characterized by definite physical stigmata. Goring reached the conclusion that "there is no such thing as an anthropological criminal type." He did conclude from his studies that criminals are shorter in stature and lighter in weight than non-criminals; in other respects he did not think they were physically different. In 1939 Prof. E. A. Hooton of Harvard published the results of a twelve years' survey of the anthropology of the American criminal.³ His conclusion from this extensive investigation of the external bodily characteristics of convicts in American prisons is that the physical characteristics of criminals are statistically different from those of non-criminals. He warns that such physical aberrations as he finds are only minute, though statistically significant deviations among large groups of criminals and civilians. He points out, however, that these deviations are in no sense to be regarded as "stigmata" which could be used either to identify known criminals or detect incipient law-breakers. He found that the general tendency was for criminals to be shorter, lighter in weight as well as younger, smaller-chested, while lengths of the head, nose and face are diminished and the breadth increased. In these regards, he found criminals as a whole differ from civilians. He also found the physical characteristics of criminals in one offense category, murder for instance, to be different from those of criminals in other offense categories. Hooton's main conclusion was that the criminal is a biological inferior, that in physique he is selected from the lower end of the scale.

Sutherland, in appraising Hooton's conclusions, charges him with making ethical evaluations of physical characteristics without giving an explanation of his evaluations. He points out that if the proof of inferiority is found in the rate of imprisonment associated with it, then it would follow that the male is biologically inferior to the female, for males are committed to prison ten times as frequently in proportion to numbers as are females. According to Hooton's policy, the males in the population should be weeded out because of their greater crime rate. Sutherland's conclusion on this matter appears to be entirely sound: "In general, so many variables are associated with crime that a statistical association of one of them with

³ See E. A. Hooton, *Crime and the Man* (Harvard University Press, Cambridge, 1939)

crime does not in any sense justify a conclusion that it is the primary cause of crime" ⁴

It may be asked that if one accepts the determinism of the Positivists and their denial of free will as a basis of responsibility, then on what grounds can one deal with the criminality of a person? Prof Gault of Northwestern University answers this question as follows. "In addition to the purely scientific motive that prompts one to examine him (the criminal) as we examine any other phenomenon for the sake of satisfying our curiosity, there is the social need for protection against depredation. This is the practical ground for the arrest, the trial, the conviction, and the imprisonment of criminals. The Positive School contends that the excuse for punishment is to be found in the need for social defense." ⁵ It is obvious that society must, from the standpoint of practical values, take appropriate cognizance of a criminal's acts although the Positivists have subordinated them in scientific importance to the criminal's nature. The point is that what is "appropriate" is henceforth to be determined largely by the criminal's nature rather than by the application of theoretical formulae to a criminal's acts, as the Classicists maintained

The Modern Clinical School

The theories of the Positivists produced a revolution in criminology. There has arisen in the twentieth century what may be called the modern Clinical School of criminological theory as a result of the work of Lombroso and his followers, supplemented however by the contributions of the modern sciences dealing with human behavior.

The development of modern science rather than merely the early impetus given the modern Clinical School by the Positivists must be given primary credit for the insight this school affords the student of criminal behavior. In the early part of the present century a truly scientific basis for the study of the criminal was sought. A consideration of the personality of the criminal as a whole was stressed in contrast to the earlier one-sided emphasis upon some particular physical or mental trait as *the* cause of criminality. The abstract speculations and hazy generalities of the earlier schools of criminology find no place in the concrete studies which modern science is making of the multiplicity of factors involved in the formation of the criminal personality and criminal way of life.

Physical factors receive the attention of the modern Clinical criminologist but not in the manner of Lombroso. Since his day great strides have been made in understanding the relation of the physiological functioning of the body to human conduct, especially with regard to the influence of the endocrine or ductless glands. The modern contributions of physiology and

⁴ E. H. Sutherland, *op. cit.*, p. 92

⁵ Robert H. Gault, *Criminology* (D. C. Heath & Co., Boston, 1932), p. 30.

physiological chemistry are therefore an invaluable aid to the Clinical criminologist in throwing light upon the genesis of criminal behavior.

Advances in psychology, especially in the field of mental testing, are also a great aid to the modern criminologist. The application of psychological tests such as the Binet-Simon, while no panacea, represents an important line of procedure in determining mental capacity as a factor in the adjustability of the individual to his community and its standards. Development of tests of man's emotions and increasing knowledge of man's emotional nature afford further valuable diagnostic material for the understanding of the personality of the criminal. Social psychology, emphasizing the behavioristic concept of the conditioned reflex and conditioned response, affords further new scientific aid to the Clinical criminologist by showing the influence of interaction between the individual and groups in which he is a member.

In America particularly, investigation of social conditions, community surveys, ecological studies and the like have resulted in the rapid development of the study of sociology. These studies have made clearer than heretofore the social conditions responsible for much of our delinquency and crime in America. The contribution of the sociologist that is new and especially valuable is the emphasis that people's behavior, to be intelligible and understandable, must be studied in terms of the social situation in which it has occurred.⁶ The sociological or cultural approach to the study of crime and delinquency regards any behavior responses as functions of situations. Just as patterns of behavior and attitudes of nations and whole populations arise in social interaction and become social patterns or definitions, so too in the more restricted fields of social interaction, cities and local communities within cities, there develop group attitudes and behavior norms which characterize that particular group and condition the behavior-formation of the individuals growing up in that situation. According to the sociologist, then, the character of the community in which criminal behavior arises must be studied. The distinctive contribution of the sociologist has been to show in recent studies how very real and dynamic the relationship is between the cultural life of a community and the personal lives of the people who compose it. The sociologist sees man as an animal born into a civilization, a culture, building habits that reflect this culture, and thus becoming a thorough product of it. The importance of this relation between personality and culture will become clearer as we get further into our study of criminal behavior in the next chapter. The modern Clinical School has been benefited a great deal by this contribution of the sociologist.

It remains to point out the valuable contribution of psychiatry to an understanding of criminality. Psychiatry grew out of psychology. Its main concern is a study of the abnormal functioning of the mind and emotions.

⁶ See C. R. Shaw, *Delinquency Areas* (University of Chicago Press, Chicago, 1929), Chap. 1.

The work of Freud, Adler, Jung and many other psychiatrists have afforded the modern diagnostic criminologist with an indispensable tool in their work by drawing attention to the mental factors in anti-social behavior. The psychiatrist sees in mental disease an evidence of failure of the organism to adjust itself to the demands of a highly complex and dynamic social environment. The psycho-analytic technique is particularly valuable in throwing light upon the root of trouble involved in much criminal behavior. Psychoanalysis assumes that determinism is operative in the psychic sphere as well as in the physical. It analyzes the past life of the person to find the hidden complexes associated with past experiences in order to disclose the origin of abnormal behavior and thereby afford therapeutic assistance in the criminal's rehabilitation.

As a result of the work of the psychiatrists there is an increasing recognition of the part that mental disease plays in crime. The psychiatrist too has been instrumental in calling attention to the fact that no satisfactory disposition of a criminal case is possible without taking into account the psychology of the offender. So it has come to be increasingly recognized that there is a definite psychiatric approach in individualizing the treatment of criminals from the time of apprehension to the final disposition of the case. Most communities today now have some sort of psychiatric service for their juvenile and criminal courts. Psychiatry was first used to pass upon the sanity of an accused person and his legal responsibility. It has now so extended its sphere of influence that today psychiatry is an indispensable aid in nearly all prison programs of rehabilitation and reform. Every modern prison, at least, attempts to classify its inmates according to their psychiatric and psychological make-up.

The profession of the clinical or diagnosing criminologist is now definitely established. These men are specialists in psychiatry with additional training and knowledge of psychology, medicine, social work and educational methods. The real beginning of the new criminology dates back to the pioneer work of Dr. William Healy as director of the Juvenile Psychopathic Institute, organized in Chicago in 1909, to study young offenders brought before the juvenile court.

Dr. Healy says that it had been called to his attention repeatedly "that there is astonishingly little in the literature of criminology which is directly helpful to those who have to deal practically with offenders. Of general theory there is no lack, but when we come to that study of the individual which leads to clear understanding and scientific treatment, there is almost no guidance."⁷ It was for this reason that he decided "to go to the criminal for the facts." He divested himself of all presuppositions, as far as possible, and made it his aim to gather every shred of information about each delinquent that could possibly have any bearing on the offender's misbehavior.

⁷ William Healy, *The Individual Delinquent* (Little, Brown & Co., Boston, 1915), p. 3

He brushed aside previous general theories of crime and emphasized the necessity of intensive study of the individual case as the only way of arriving at the truth. By substituting the individual case study for the method of general observation, theoretical speculation or statistical enumeration of traits and conditions, he produced a revolution in criminology by this new method. The study of criminal behavior was now truly placed upon an empirical, inductive basis. This new method of research of the clinical criminologist significantly made clear that the study of the criminal is a study of human behavior and not the study of a special variety of the human race as Lombroso had urged. Dr. Healy, then, conceived his task to be the search for *all* the influences, factors and forces which determine behavior. In studying criminal behavior, he adheres to a strict determinism, as in fact do all psychiatrists. He says: "Most serviceable to us is the conception of the individual as the product of conditions and forces which have been actively forming him from the earliest moment of unicellular life. . . . The interpretations that may be derived from acquaintance with the facts of ancestry, ante-natal life, childhood development, illnesses and injuries, social experiences, and the vast field of mental life, lead to invaluable understandings of the individual and to some idea of that wonderful complex of results which we term personality"⁸

What is the diagnosis that ought to precede treatment of every delinquent? According to Dr. Healy, it ought to include every fact that can possibly have a bearing upon conduct. The Schedule of Data Concerning Delinquents included the following items: family history, developmental history, environment (including home and neighborhood), mental and moral development, anthropometry, medical examination—particularly from a neurologic and psychiatric standpoint, psychological—(a) mental testing, (b) psychological analysis, and a description of delinquencies. In more recent studies Dr. Healy has included under psychological studies, mental balance, psychological examination and personality traits, and in them he has emphasized the relation of the delinquent to his groups. By thus studying the traits and situations of the delinquent, those that appear to be the ones instrumental in producing the delinquency are selected. Obviously not all the facts, when collected, will be found to bear on the delinquent behavior. A *diagnostic and prognostic summary* is necessary, therefore, to select those facts that do have a bearing upon the person's behavior. In the light of their significance the outlook for the case under various environmental conditions should become plain. The diagnostic summary, leading up to its outcome in prognosis, must be inclusive of all the main contributory factors, somewhat as follows, as Dr. Healy describes it: "Here is the individual with (1) such-and-such physical characteristics, and (2) such-and-such mental abilities and mental traits, who (3) com-

⁸ William Healy, *The Individual Delinquent* (Little, Brown & Co., Boston, 1915), p. 25

mitted such-and-such types of delinquent acts. There are (4) in the background such-and-such conditions of defective heredity, pathological development, injuries, early teachings of immoral conduct, bad personal habits, lack of educational opportunity, or what not. In the light (5) of his being what he is physically and mentally and having this background, we can offer, on the basis of known predictabilities, such-and-such a prognosis if such-and-such treatment is afforded in such-and-such environment. (Always to be included here as the old environment and other alternatives open)."⁹

The following is a summary of a case among many others contained in Dr. Healy's *The Individual Delinquent*. It illustrates the possibilities of better understanding which the individual case study as a mode of inquiry affords. It is a typical history of a delinquent secured by this method and it makes clear the helpfulness, both in prescribing and administering treatment, which the case study method of the clinical or diagnosing criminologist affords.

Mary Doe, Age 18. No. 333. Sept. 26, 1911.

Physical: Very well developed and nourished. Pleasant features and expression. No sensory defects of importance. Examination otherwise negative.

Mental: Notwithstanding the fact that this girl never got beyond third grade, we find her to have quite fair mental ability. We were astonished to see her good performance on some tests. She has good mental control and is well oriented in all ways. She has much motor dexterity. Not the slightest evidence of aberrancy found, although her relatives say she must be crazy to do what she has done. Mental diagnosis: good ability with exceedingly poor educational advantages.

Delinquencies. Repeated stealing over a considerable period in department stores where she has been employed. At one time she was stealing by a system which she had evolved.

Causative factors: (a) heredity. Parents are dead, but from other relatives we gain nothing but negative evidence. The whole family have good reputation, (b) developmental history. This, except for ordinary children's ailments, is negative, (c) environmental conditions during childhood were not especially good on account of poverty which in turn was caused by much illness in the family. However, we do not know this has direct bearing, (d) much more important is the fact that the girl had exceedingly poor educational advantages on account of frequent changes of abode and being kept at home on account of family illness, from this has come (e) a dearth of healthy mental interests. The girl is a great reader, but only of the cheapest literature and the sensational daily newspapers; (f) probably the most important factor is due to mental conflict over sex affairs. She has had no guiding hand and ever since her childhood has been hearing of these things from bad sources. Many of her occupational acquaintances tell her of the easy money they make in these ways.

⁹ William Healy, *The Individual Delinquent* (Little, Brown & Co., Boston, 1915), pp. 61-62.

and are able to indulge in dress and pleasures which are beyond her. Apparently she has always rejected the advances which had naturally come to her as an attractive girl among immoral associates, but has thought much about it (Note her own story.) As a definite reaction to this, she has got to stealing, (g) bad companions.

The *outlook* we should consider distinctly good under different environmental conditions and if some good woman will give her a helping hand. The mental mechanism back of her misconduct has been frequently observed by us and the best of results have been obtained when constructive measures have been offered under probation. Change of occupation, friendship with some woman competent to become her confidant, adviser and helper, and development of healthy mental interests we feel sure will do what is needed.¹⁰

The following is a summary of one of the case studies of the Judge Baker foundation in Boston.

Case Study No. 8. Series I.

Olaf Kellman: 15 years, 5 mos., born U. S., father born in Austria, mother born in Sweden.

Summary of Staff Conference.

Problem· Delinquencies Repeatedly running away from home. Out late nights Breaking and entering and larceny Many times other stealing All with companions.

Physical Short, but otherwise very good general development Strong and healthy.

Mental· (1) Abilities. Very good all-round ability, but not well advanced in school. (2) *Mental Balance*: Quite normal. (3) *Personality*: Friendly, good-natured, energetic, rather firm characteristics in general, not hardened

Background: (a) *Heredity* Practically negative (b) *Developmental*: Negative. (c) *Home Conditions* Poverty, much sickness, clean but unattractive. (d) *Habits* Practically negative.

Probable Direct Causations· (1) Bad companions, a delinquent group (2) Lack of good parental management, parents sickly, etc. (3) Dearth of good recreational opportunities in neighborhood. (4) Treatment under the law· (a) Continuance of crowd associations through sending boy and companions to some institution, (b) Return of boy on parole to old associations

Prognosis and Recommendations. Thoroughly bad under old conditions, but boy's good personality traits bespeak possibility of great success elsewhere. Needs entire removal from present neighborhood. Parents, of course, should move for sake of all the children. Home of relatives in suburb might be tried, but other placing may be necessary. However, mere placing not sufficient. Should be found work commensurate with his good ability and be aided at once to form new companionships and to develop many energetic interests.

¹⁰ William Healy, *The Individual Delinquent* (Little, Brown & Co., Boston, 1915), pp. 124-125.

Final Comment

It would have been possible to cite in considerable number cases similar to Olaf's, where, following proper treatment, there was successful outcome; the chances of success with well directed social therapy are great. But in order to illustrate the vital necessity of radical treatment where a crowd situation is involved, and the costliness of misdirected or half-way measures, we have selected a case of failure, flanked by the records of comrades, most of whose careers have been equally disastrous.

It seems a justifiable inference that Olaf's continuance in delinquency might have been averted, since away from his crowd he for long did well. And the same is true of some of his companions. This main teaching point of the case, though rather obvious, is tremendously important.

There are no subtleties involved in the case, and, adequate to reveal the essentials for treatment, there was required only a minimum amount of study, such as any court should have at its command.

Clear as the needs of such a case are to students of delinquency, it is our experience that in many courts and on probation and parole, the fundamental therapy that such a group situation calls for is partially or entirely neglected.

The following practical points brought out in this case study are, among others, worthy of mention.

(a) The psychological study of what is involved in human conduct reactions requires not only diagnosis of the personality makeup of the individuals concerned, but also study of the dynamics of the situation, the forces and influences at work.

(b) In a delinquent crowd or group situation it is not enough to consider, in determining treatment, any offender as an isolated individual, as where one prescribes, for example, treatment commensurate with the offense or a social therapy because it has helped others. The group must be thought of as a dynamic entity, in relation to the bonds which hold it together. And any member must be treated in a manner that takes the group situation into account.

(c) The costliness of procedure without careful analysis of the situation, without inventorying loss and gain, success and failure, is as true in social work and in proceedings under the law (shown in both fields of endeavor as applied to the above case) as it is in science or business.

(d) A family problem taken over by a social welfare agency inevitably demands consideration of well-being of the children beyond matters of physical needs. Whatever affects their mental and moral life is of as great, if not greater moment.¹¹

It remains briefly to point out the advantage of the individual case study

¹¹ Case Study No. 8, Series I, Judge Baker Foundation, Boston, Dec., 1922

method of determining the causes of crime as compared to previous methods. One method that has been used is to correlate statistics of crimes with certain physical or social variables. Thus W. A. Bonger, in his *Criminality and Economic Conditions*, showed there is a close correlation between crime rates and economic conditions. Thus others have attempted to show the significance of the seasons, unemployment, etc. This method may undoubtedly have some value but it does not locate causes with any degree of precision. Another statistical method is to compare the frequency of certain traits or conditions of criminals and of non-criminals. The relative frequency of feeble-mindedness in criminals and non-criminals, or of broken homes, alcoholism and numerous other factors can be thus studied. It is to be noted that no pretense is made by this method of studying any criminal as a unit, nor is any effort made by this method to determine the cause of criminal behavior of a particular individual. The method has its value of course Goring used this method to disprove Lombroso's theory As noted in the above cases cited, only by the individual case study method of the modern Clinical School is the criminal rather than the trait or condition the unit of investigation. All the traits and conditions of one delinquent person are here studied together. Statistics are useful in obtaining a general view of causation but abstracting traits and conditions and studying them as a unit is not sufficient to get at the heart of the matter. This the individual case study method does much more successfully by studying the individual criminal as a unit in himself. It is the best method by which we can obtain an understanding of the mechanisms by which criminal behavior is produced To this end, too, the more detailed records we have of the development of personalities, criminal or non-criminal, the more insight will we gain on human nature and differences in human behavior.

CHAPTER 51

THE MAKING OF THE CRIMINAL

Determinism and Criminal Conduct

All through history society, in endeavoring to bring anti-social behavior under social control, has been dominated in its thinking with regard to the problem of crime and criminals by emotional reactions of hostility and vengeance. It should be clear, however, that as long as such emotionalism persists, it will be difficult, if not impossible, to secure a *rational* consideration of the matter. The case of the treatment of the insane, past and present, illustrates well how fear and hatred tend to disappear as scientific knowledge dispels ignorance. It is not a vain hope, therefore, to believe that as more of the available information we have today regarding the nature and causes of crime and criminal behavior is more widely disseminated, we shall come to deal as rationally and unemotionally with our criminals as we have been doing in the past quarter of a century with our insane.

We have already seen that there is emerging a new criminal science as the result of the scientific discoveries of the psychiatrists, the psychologists, the medical scientists and sociologists. We have come to a realization that crime is conduct and that criminal acts are phenomena to which scientific examination can be applied as well as to any other phenomenon. Psychiatry particularly has been making clear the fact that every human act, whether criminal or otherwise, is the end-product of all the forces that have entered one's life—acquired habits, traditions, customs and cultural influences—and that under a given situation one cannot act otherwise than he does. Actually, all the teaching in the world has assumed that there is no free will. Otherwise there would be no point in parents or teachers training children with such care in good habits and right attitudes, in what is right or wrong, if they did not have every reason to believe that they would act in a given circumstance as they were conditioned to act. William James very properly asserted that “habit becomes the man.”

Dr. William A. White, famous psychiatrist, stated that this concept of determinism is one of the most important and significant concepts introduced into the field of modern psychology. It is important because, if mental events could be varied at the whim of the individual, if they came into existence without adequate causes, then, as White says, “there would be no use in attempting their investigation, or any investigation that was made would have results that could have no meaning.” Psychiatry demon-

strates that if a longitudinal section of any individual's conduct be studied carefully, it becomes evident that the entire series of acts follow one another logically. The reading of criminological literature generally, and particularly case studies of delinquent careers, supports this deterministic position of modern psychiatry. This is why the Dutch criminologist, Dr W. A. Bongers, has said that he who adheres to the doctrine of free will cannot be admitted to the criminologist fraternity.

On this basis of determinism, then, the criminologist endeavors to unravel the various influences or groups of factors in the causal complex of criminal behavior. Criminal behavior, of course, is a very complex phenomenon and to determine which factor in a pattern of criminogenic forces is the primary one is much more difficult than it is to isolate the factor or factors which produce a certain result in a chemistry or physics experiment. Nevertheless, enough is already known of the conditioning factors of criminal behavior to justify efforts which will result in understanding and hence, possibilities of control. The experience of the physical sciences has made it perfectly clear that control of behavior is only possible if it is based on knowledge of the factors or processes which produce such behavior.

In studying the making of the criminal, it is well to remember that there is no difference in the processes which result in lawful behavior, on the one hand, or in criminal behavior on the other hand. Criminal behavior differs from lawful behavior only with respect to the standards by which it is judged. The genetic processes involved in both are the same. Anyone can learn any kind of pattern of behavior which his surrounding culture impresses on him as the thing to do. Criminal behavior, thus, is determined in a process of association just as is lawful behavior. The divergence in the nature of the two kinds of behavior is due merely to the difference of contents of the patterns presented in association.

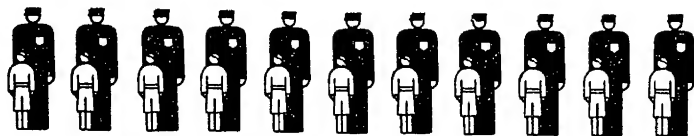
The Interplay of Forces in the Beginnings of Criminal Behavior

When a clinical criminologist studies the life-history of a given criminal or delinquent, his greatest skill and experience are required to determine which factors are of prime etiological significance in that particular case-study. Not only is there no single cause of crime but actually there are as many causes of crime as there are criminals. All kinds of qualitative and quantitative factors in a variety of combinations may result in criminal behavior. The complex of factors and their interaction vary in every human being in making him or her what he is. No two persons are exactly alike nor do they represent in their behavior a similar combination of forces that explains what they do. The diagnosis of every case represents a new challenge, for every human being is different from other human beings and the forces or factors that made him what he is can never be identically the same. Morris states the heart of the matter as follows: "Criminal behavior, like all other behavior, is a continuously growing pattern of activity drawn

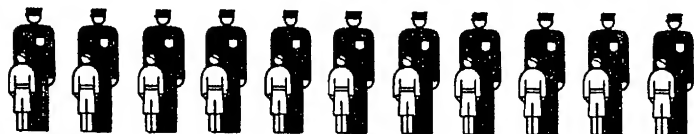
WHY CHILDREN WERE ARRESTED , 1935



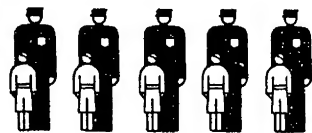
LARCENY



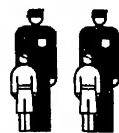
BURGLARY & ROBBERY



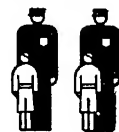
BEATING FARES



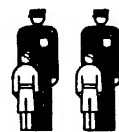
NEGLECTED CHILDREN



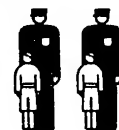
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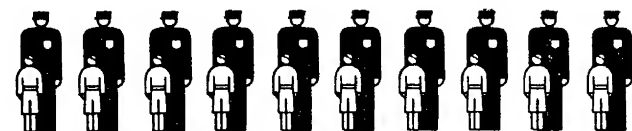
DISORDERLY CONDUCT



PEDDLING



OTHERS



Each symbol represents 100 arrests

[New York City Police Department. By permission of Pictograph Corporation]

by the interplay of many forces within and without the criminal person. It cannot be too strongly emphasized that *for every man the combination is unique and the results are unique*. When we say that unemployment, poverty, mental defect and the like cause crime we are only partially right. If unemployment hits a particular person under just the proper circumstances it may be the determining factor causing his crime. Like the last block in a jig-saw puzzle it completes that picture only when all the other blocks are there. As a matter of fact, we are well aware from common observation that when people are thrown out of work they do not usually become criminals. When unemployment is followed by crime, therefore, it is never *the* cause of crime although it may be the last, the most important, or the most spectacular element in a combination of factors producing crime in this specific instance.”¹

To consider single factors isolated from the rest would be futile and irrelevant. In a particular case of criminal behavior, the complexity of factors involved must be sought out—those residing in the criminal himself and those in the material and social environment. A number of individual factors may be related to the production of criminality—the physical constitution inherited, physical defects and handicaps of various sorts, sub-normal intelligence, emotional instability, mental conflicts and other mental derangements. Power of adjustment to the demands of life is interfered with in such instances. Drs. Alexander and Healy, studying the etiology of criminal careers from the angle of psychoanalysis, claim that emotional factors of all kinds were found to be active in creating inner tensions which were relieved by criminal acts. They are convinced that, apart from the social situation, the personality problems of law-breakers must be taken into account in order to understand behavior. Accordingly, to comprehend the psychology of the offender, the whole personality development from early childhood on must be reconstructed.² Cultural and environmental factors are as varied as they are numerous. Marital status plays a part. Divorced people for instance contribute a disproportionately large share to the criminal population in comparison with single, widowed or married people. A study of family status of prisoners reveals a lack of adequate home life in an abnormally high number of cases. Numerous studies have shown that economic need is related to crime. Correlations have been established between poverty and crime, business cycles and crime and other general economic conditions and crime. All that a survey of such various factors shows is that every human being, criminal or otherwise, possessing his own unique equipment of talents, abilities, innate capacities or limitations, is born into a social group where a multiplicity of influences play

¹ Albert Morris, *Criminology* (Longmans, Green & Co., New York, 1934), p. 69.

² Franz Alexander and William Healy, *Roots of Crime* (Alfred A. Knopf, New York, 1935), Chap. 10. The book contains excellent case studies.

upon him and help mould his personality. In the case of the delinquent the outcome is unfortunate from society's viewpoint and this suggests that a certain number of deleterious influences and forces are recognizably related to the formation of such an anti-social life organization

The dynamic meaning of causation of criminal behavior lies in the constellation of these various conditioning factors, the total situation, so to speak, of the individual's personality make-up and his surroundings. In any given case of criminal behavior some particular conditioning factor may appear to overshadow other factors in etiological significance, but the final result in that particular case of criminal behavior is produced by the interaction of all the factors that are involved in that person's life history. One factor has no meaning when divorced from the others. Some factors in a person's career persist for a long time. Others enter into a person's life with explosive force quite abruptly and have an overwhelming effect for a short time but then fade quickly. Some factors may have much to do with the initial stages of a crime career but are not the significant influences that perpetuate it. So to understand criminal behavior it is necessary to investigate and understand both the individual and his setting. The case study method, in doing this, reveals human behavior for what it is—a function of the interplay of "organism-culture."³

The increase of delinquency among juveniles is a startling and most dangerous trend in our present-day American civilization. Recruits for the growing ranks of those who prey on society are being constantly turned out under contemporary American social conditions. We know that a large majority of these juvenile delinquents become confirmed criminals. Barnes states in one of his books that some 2% of all children are problem cases, 80% of problem children become juvenile delinquents, and over 80% of juvenile delinquents finally become criminals.⁴ The large number of youngsters who are committed to penal institutions, both reformatories and state prisons and penitentiaries, is an index of this startling fact. The Wickersham Commission found that 54.8% of those committed to adult penal institutions in 1930 were under twenty-one years of age when committed. In addition to this there are more than 20,000 young persons under eighteen years of age who annually enter the various juvenile institutions because of delinquencies. It is a fact that a definite majority of those committed to prisons for adults have been under twenty-one years of age upon their arrival.⁵ There are no reliable statistics to show the exact number of juveniles who annually come into conflict with the law, but a rough approximation of 200,000 annual youthful offenders would not be far amiss. In addition there are a large number of cases which are handled "un-

³ N F Cantor, *Crime and Society* (Henry Holt & Co., New York, 1939), p. 397.

⁴ Harry E Barnes, *Society in Transition* (Prentice-Hall, Inc., New York, 1939), p. 715.

⁵ *Ibid*, pp. 715-716.

officially" by the courts and do not become a matter of permanent court record—perhaps 30% of the total.⁶ By early adolescence all too many American youths today have come into conflict with the law. Why is this so? Surely there must be a close interfunctioning between their milieu in which they grow up and their behavior. Certainly delinquents and criminals are not born so, they are made. Let us examine this dynamic process of the making of a criminal.

No newly-born child is predestined to criminal behavior later in life. The hardened professional criminal is merely a finished product of an interplay of forces that sometime had a starting point in his life history. It is a fascinating problem to find out "how they got that way." At birth both the professional criminal and the law-abiding respectable citizen were but bundles of inherited potentialities and neither was ear-marked for one type of career or another, for a criminal type of personality or another, for social or anti-social attitudes and values. These are acquired along life's highway and there is always a starting point, usually much earlier than is generally supposed. Babies may not be criminals but the fundamental sets and habits that make the later criminal personality and propensity possible are established very often in this early period of life. We have the evidence of more than two hundred child guidance clinics in this country, as well as of those abroad, with regard to the childhood origin of the causes of later criminality.

As soon as a child is born powerful and insistent social forces begin to play upon him, attempting to shape his behavior and control the expression of his innate impulses. From the moment of birth everyone during their conscious active existence is being educated, in the larger sense, that is, being shaped and moulded by his social milieu. There is no escaping it for anyone. Every influence, in the home, the school, the play ground, or the wider community, with which the child comes into contact and which affects his behavior, is an educational force. All kinds of educational situations are constantly confronting the human person and playing their role in the moulding of personality and character. No one can escape living among his fellow human beings and his training is calculated to help him get along with them and to help him make successful adjustments to life situations. But this training may be faulty, or good educational influences may be offset by bad ones. Not only parents, brothers and sisters, teachers or ministers are the educators of children; the tabloid newspaper, the movies, the leader of a boy's gang, the neighborhood "big shot" are also effective parts of the educational situations which confront the plastic, growing child and help to mould character and personality. Gradually and very early in life amidst this interplay of forces and conditioning pressures the outlines of personality begin to take shape as the child's dynamic

⁶ Mabel A. Elhott and Francis E. Merrill, *Social Disorganization* (Harper and Brothers, New York, 1934), pp. 85 and 86.

driving impulses are shaped according to the pressures of his social milieu.⁷ Experience demonstrates vividly the truth that the most fundamental preventive work in crime that can be done is to find out and understand what experiences of childhood are significant to later crime careers.⁸

The late Dr. Nathan Peyser, writing on "Character Building for Crime Prevention," sums up the whole matter well as follows:

To these influences the child reacts consciously or unconsciously, for good or for ill. But it is out of these interactions, not solely out of the lessons of the schoolroom that he fashions his ideas, habits, attitudes, goals, interests, appreciations and ideals. As outcomes of his satisfactions and frustrations, as reactions to his successes and failures in adjustment, he engenders his likes and dislikes, his ambitions, his attitudes toward property, institutions, and laws, and his patterns of response to self and to others. It is out of this complexity and continuity of experience that he develops his personality and character traits and his ways of living.

For character is the integrated product of all of life's experiences. . . . Character is the person himself behaving as a social being functioning. It is the totality of his habits, attitudes, desires, fears, fixations, inhibitions, prejudices, loves, hates, values, standards, controls, and ideals, in so far as these determine his behavior in the various social groupings in which he moves. It is a function of his conscious and unconscious motivations. It is the dynamic quality of the life pattern that living in the home, the street, the playground, the theater, and the school, has fashioned for him.⁹

The Education of the Criminal

The education which results in a criminal personality and criminal philosophy of life is in no wise different from the nature of all education. The life history of any hardened offender amply proves that he has been habituated to his way of life just as the respectable banker or lawyer has been habituated to his. Both gradually absorbed certain elements from their social milieu and are products of it.

The juvenile delinquent already represents a continuation of a process that had started previously. Of course, not all criminality represents childhood beginnings nor do all who tend in this direction necessarily become full-fledged criminals. It is true, however, that the pathways that diverge in the direction of acceptance of the social code or of the criminal code may, and usually are, taken very early and followed to their logical outcome. Early anti-social behavior is significant because of its dangerous possibilities.

The contacts in the home represent the main conditioning factors of

⁷ See Alexander and Healy, *op. cit.*, p 281 ff on determining factors in personality formation

⁸ See Morris, *op cit.*, Chap 6.

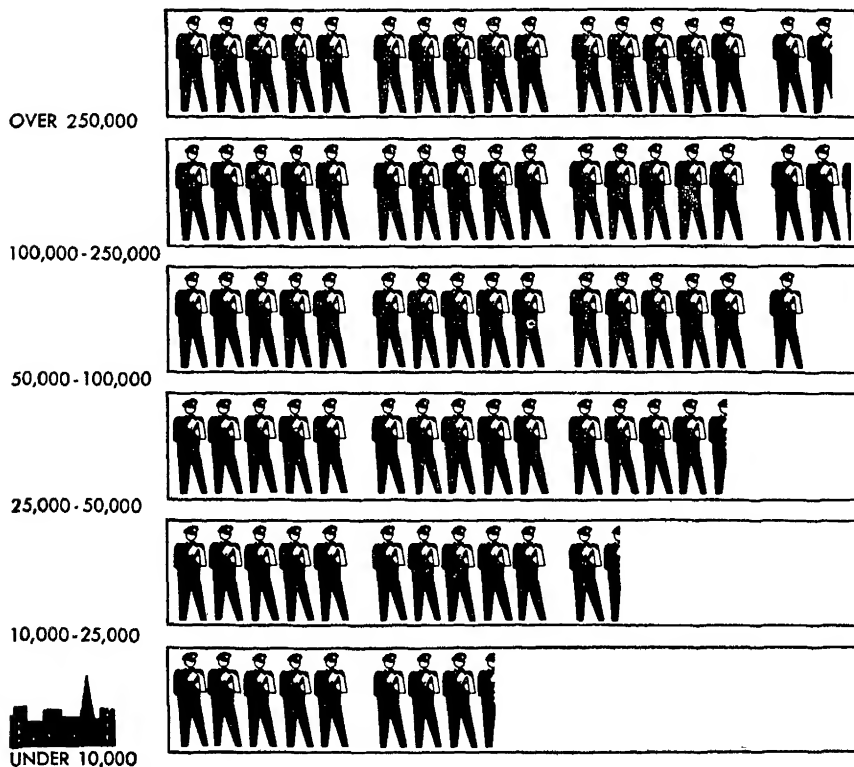
⁹ Nathan Peyser, in *Preventing Crime, a Symposium*, Sheldon and Eleanor Glueck, Editors (McGraw-Hill Book Company, Inc, New York, 1936), pp 93-94

the pre-school child. If delinquency occurs during the first five years of childhood, the family situation can be looked to as being primarily responsible. This is the period when proper fundamental sets are laid down and when deviations in conduct can be most easily corrected. Such things as swearing, temper outbursts, lying, destructiveness, stealing and the like

MORE CRIME IN LARGER CITIES

NUMBER OF MAJOR CRIMES KNOWN TO THE POLICE

PER 1000 INHABITANTS



Each policeman represents one crime known to the police

[From Winthrop D. Lane, *What Makes Crime?* (Public Affairs Committee, Inc.). By permission of Pictograph Corporation.]

are not infrequent and must be dealt with properly and promptly. If, of course, there is no wholesome, positive family direction of the child, he is victimized by his unfortunate situation. There may be not only neglect of parental duty but also unwise over-solicitude both of which have harmful results. Sex words overheard may cause emotional conflict which expresses itself in delinquent behavior. Such cases are frequently found in clinics.

There is all too much blundering by parents in proper sex instruction. Very frequently it is evaded entirely. The resulting loss of confidence in parents opens the way directly to the contamination of the child through misinformation secured as children will. Persistent lying by a child usually indicates a defense mechanism against a harsh world. The habit, if persisted in, needs attention for the basis for poor adult adjustment is being established. Early tendencies to stealing and a lack of respect for property obviously demand serious parental attention. Vagueness of the parents themselves with respect to property rights would not only intensify the difficulty of the child in learning this important concept but would also create a basic anti-social habit.¹⁰

At age five or six, school life begins as well as new demands of an expanding horizon of life upon a personality that has been shaped fairly definitely in the home. The new authority in the child's life is the teacher. If the child was obedient, rebellious or deceptive in his behavior to parents, the same behavior mechanisms will be used in responding to the authority of the teacher. Bad habits of conduct brought from the home unsuited to the new situation must be quickly changed. Ability to adjust to the demands of society cannot be learned too soon if success in group living is to be achieved.

The type of behavior that worked so well with parents and brothers and sisters cannot be depended on to be effective with teachers or schoolmates. Tasks must be met and restrictions in former spontaneous activity bulk large in the new life. What takes place is a sort of psychological shaking down process so that personality weaknesses of various sorts soon become apparent. These weaknesses will not be catered to as they may have been in the family. The child soon is forced to face the reality of that fact. It is a crisis situation in the continuance of the shaping of personality. Some children adjust well and school life is a pleasant experience. Other children adjust poorly for one reason or another. They may be the products of poor home training. They may be emotionally immature, fearful of life away from their mothers, or they may be suffering from physical or mental handicaps that comparison with other children first makes clear. Whatever the reason, the problem child acts upon his feelings of resentment to school, fails to submit to the demands it makes upon him, and exhibits behavior at variance with the conventions of his environment. Here may be the beginnings of criminal conduct if such behavior is handled in an ignorant manner. The possibilities of preventive work are particularly fruitful at this point. These problem children in school are not predestined delinquents but they are potentially heavy contributors to our adult criminal population.

The school has the opportunity to do constructive work with its human

¹⁰ See Morris, *op cit*, Chap. 10

material. Troublesome behavior may be related to the physical condition of the pupil. The supposedly stupid child may be found to have defective vision. Speech defects often influence the personality of delinquents. The tendency of stuttering, for instance, is to make the child highly anti-social. Such a child comes to look upon himself as different. Knowing nothing but jibes and discouragement, he seeks comfort in associations where his disorder is overlooked and not commented upon. So an otherwise normal youngster acquires miserably inferior associations as a result and consequent practices such as homosexuality, thieving or vagrancy may be indulged in. A stuttering offender needs, above anything, encouragement and treatment. The dull child, forced to repeat grades, and unable to leave school before a certain age, only too frequently becomes a disciplinary problem and comes into conflict with the law as a truant. The academic subjects such children must study are beyond their grasp and industrial work suited to their needs is not offered by the school. The resulting maladjustment is inevitable. The group of constitutional inferiors, characterized by atypical emotional reactions—impulsive, lacking in willpower and self-control although of normal intelligence possibly—find themselves overwhelmed by the difficulties they face and express their childish rebellion or despair in troublesome behavior. The delinquencies of these frustrated, unhappy children are but symptoms of poor adjustment. Such disorders of emotion or intelligence can be discovered by proper examinations but comparatively little has been done in our states to sort them out or afford the treatment necessary. The strange crimes and delinquencies of varying degrees of seriousness recounted in the newspapers from day to day are a tragic commentary upon society's failure in respect to this group of children.

The weakness, however, may not be only in the child; the school itself may be a causal factor in starting delinquent trends of behavior. The school's material equipment may be inferior. For instance, vice may be directly encouraged where toilet facilities are not properly separated for the two sexes. The artificiality of much schoolroom procedure, the stilted, formal recitations, lack of discussion or discussion in social science studies which studiously avoids contact with reality, senseless, unjust repression in the classroom, unfairness or lack of self-control on the part of the teacher, or complete disregard of the child's point of view are all conducive in producing irritation, hatred, even open revolt on the part of pupils. There are a sufficient number of individual case records to show that much juvenile delinquency results from the failure of the school to hold the interest or be able to control its pupils.

The expanding horizons of the growing child's educational experiences, wherein environmental influences are gradually absorbed into the developing personality, soon includes a greater new world of experience, which lies outside both home and school. School age is coincident with an increased freedom and a larger range of movement. Outside of class hours

new experiences are sought—adventure, excitement, new kinds of action. Contact with adults other than parents, or with other children from homes of various kinds of backgrounds, results in a kind of revaluation of former values. Comparisons of parental views with those of others inevitably ensues. Old authoritative admonitions begin to be questioned. New stimuli unsettle old habits and values. Conflicts appear as the difficulty of making choices arises. The growing personality begins to grope toward an independence of its own. It is the process of growing up and grave dangers of being hurt, of deviating in the wrong direction from socially approved codes of behavior, are ever present.

Street life and membership in a play group or a boy's gang are present-day concomitants of practically every boy nurtured in a city. These influences are especially important in building up the attitudes and habits that underlie the child's behavior. The process of interaction between the child and the successive situations of his social world goes on uninterruptedly. While the family usually is the primary defining agency whereby the new member of society learns the code of his society, the definitions of playmates, schoolmates and others in the neighborhood also help determine standards of conduct in the juvenile and may actually offset the definitions of parents. The community also is of paramount importance as a defining agency.

The play group is a spontaneous form of primary relationship which strongly reflects the character of the surrounding community life. In certain areas of our cities these groups become delinquent gangs, evidencing persistent delinquent patterns and traditional codes and standards which are of great importance in determining the behavior of the members. Some gangs may get such a powerful hold on members that the patterns persist and finally actually dominate the community.

The gang, then, is a behavior-forming situation. The subjective factors in a personality make-up—attitudes, conception of self and one's own interpretation of the situation—arise in the process of interaction between the person and his social world. This sociological conception of personality—namely, one's role in a group—is clearly evidenced by the gang. Every member tends to have a definite status. The gang develops complex activities and the position of each individual in the group is defined, and social roles become differentiated. Every boy in a gang plays his part and gets a place with reference to the others in the group. He cannot escape being formed by the discipline the gang imposes on its members. Internally, there is a constant struggle for status in the gang.

The influence or type of education the gang affords its members can be nothing but demoralizing. From here spring our chronic truants, our juvenile delinquents and here the development into finished criminals proceeds unchecked. The plastic period of adolescence, which is the great ganging age, is the time when habits and attitudes begin to get their

ARE CRIMINALS OLD OR YOUNG?

ARRESTED CRIMINALS (MALE AND FEMALE) IN 1938

AGE

UNDER 20



20-29



30-39



40-49

50 AND
OVER

Each person represents 25,000 criminals arrested

[From Winthrop D. Lane, *What Makes Crime?* (Public Affairs Committee, Inc.). By permission of Pictograph Corporation.]

fundamental set for life. Anti-social standards and habits, acquired then, form the basis of the difficult problem which society faces in succeeding years.

What specifically does the boy learn in the gang? Thrasher states the following three-fold social heritage of the gang boy (1) personal habits conventionally regarded as demoralizing, (2) familiarity with the technique of crime, and (3) a philosophy of life or an organization of attitudes which facilitate further delinquency of a more serious type.¹¹

The boy's natural sense of loyalty finds a ready outlet in the gang. During highly formative years it is his social world. No wonder he becomes such a complete product of its influence. Here is where he learns to shoot crap, to gamble, to smoke, to become tough, vulgar and initiated into vice. By the time the boy is an adolescent he is a hardened tough possessing a precocious knowledge of all the evil there is to be learned on the street. The gang is not in any sense inherently bad. The trouble is that it lacks wholesome direction. Since for these boys no other society adequate to their needs exists, the boys spontaneously create one of their own. Vicious patterns in their environment are quite naturally absorbed to the extent that such patterns appeal to boys, for there are no strong forces in their social world to define these acts as undesirable.

Effective knowledge of the technique of crime is acquired by the gang boy by observing it in older groups and by taking part in and observing the exploits of his own gang. The educational process of the gang depends on instruction, approval, stimulus. This education of the criminal may begin as random play where differentiation between play and crime is not sharply drawn. But "swiping" apples as a game is not socially approved and the young gang boys soon come in conflict with society. The difference between "going robbing" and playing robbers is not a great one. The little fellow as he grows older copies the older members who actually do "go robbing." What starts as apple-stealing gradually proceeds to shop-lifting, to "rolling bums," to car stealing, to holdups, and finally, perhaps, to murder. These things are done as collective enterprises and these developing habitual criminals learn to become such by the education imparted in the gang. The gang is a clearing house for all sorts of technical knowledge for the various types of criminal jobs. The development and differentiation of the criminal personality is merely a part of a process of growth and education which happens to take place in groups where certain kinds of specific knowledge, habits and attitudes prevail.

The following case, showing how one youngster became a baby bandit when eight years old, well illustrates the group aspect of training in delinquency and crime. It will be noticed how much he learned on his first "big night." In one night the boy secured invaluable experience, group approval,

¹¹ Frederic M. Thrasher, *The Gang* (The University of Chicago Press, Chicago, 1927), p. 387.

acquired attitudes and definite techniques. He was now admitted to the companionship of older, experienced group members whose approval he wanted and to whom he could look for guidance.

"When I was eight years old I did my first job in the racket. This job was the biggest thrill I ever got in my life. It happened in April. That day I was hanging around with the oldest brother and his gang. They had been playing baseball all afternoon and I was watching them.

"When it got too dark to play ball we all went into the alley to have a smoke and tell stories. The big guys got to talking about stealing, and my brother said he had a good place spotted where we would get some easy 'dough' (money). The place was a butcher shop in Thirty-first Street. The big guys planned everything, and I only listened. These guys were seven or eight years older than me and had pulled off a lot of big jobs before. They would never let me go with them on big jobs, but this night I went along and they didn't say a word. We all went to the butcher shop about 11:30 o'clock. It was very dark and everything was quiet, and I was nervous and stayed close to my brother. We all slipped around into the alley behind the butcher shop, and my brother and another big guy went up to the building to see if the doors were unlocked. My brother had been in the place a few days before to see how to get in and where the cash register was, and so he led the way. I and two other guys waited close to the alley between two buildings. We were going to give 'jiggers.'

"In a little while my brother came back and said everything was locked tight. The owner lived over the butcher shop, so we couldn't make much noise by breaking the glass or jimmy the door. We all went up to the back door, and then my brother got a box and stood on it and tried the transom—and it opened. It was too little for my brother or the other guys to get through. Then I was thrilled when they said I'd have to crawl through the transom. That was the kick of my whole life.

"I was only eight and always was very little so I could get through the transom easy. I was scared but made up my mind to go through anyway. I was too thrilled to say no.

"My brother lifted me up on his shoulders and I crawled through the transom. I hung down on the inside and stood on an ice-box and then crawled down on the floor. The door was locked with a padlock and chain, but I was able to unlock the window and let the big guys in that way. The big guys looked for money first and found \$22. Then we all got everything we wanted to eat and several cartons of cigarettes and ditched the place.

"When we got out, my brother divvied up everything and I got \$4. and a lot of cigarettes. I felt like a 'big shot' after that night and the big guys said I could go with them every time they went robbin'. Almost every night we went robbin' and many times I had to crawl through transoms and one time through an ice-box hole. That's why the big guys called me the 'baby bandit.'"¹²

¹² C. R. Shaw and H. D. McKay, "Social Factors in Juvenile Delinquency" National Commission on Law Observance and Enforcement, Report No. 13, on *The Causes of Crime*, Vol. II (Government Printing Office, Washington, D. C., 1931), pp. 252-253.

The attitudes developed in the gang are according to patterns approved by the gang. The social code is more or less external to gang boys and their attitude of disrespect for community authority gives them satisfaction. So an attitude of indifference to law and order develops in the gang boy—a basic trait of the finished, hardened gangster. People outside their own group are regarded as legitimate prey and their personal and property rights are constantly violated. An impertinent recklessness and a growing attitude of superiority to the rest of the world develops. He comes more and more to live on his own resources, to be independent. He starts to stay away from home for weeks at a time. Finally, in the gang he acquires an attitude of fatalism. He is willing to take chances and, if caught, learns to take it stoically. This philosophy of life is well adapted to a crime career.

The result is open warfare between the gang and society at large. This conflict does not impress the gang boy as a matter of right or wrong; that's how life is, as he experiences it. This conflict with the rest of society hardens and crystallizes his attitudes. The first arrest finally brings realization of an organized world not fully appreciated before. What was perhaps only deviltry and toughness heretofore has now become "crime." He becomes different because the attitude of the world toward him has become different. The community dramatizes his behavior as being different from that of children who are not arrested. He is set off in his own mind from these others as a result of the arrest, threats, warnings and punishments that ensue. He now knows and feels that he is bad. The conflict with society has finally brought him into conflict with authority. He is a "delinquent," a "criminal."

The institutional experience that follows sooner or later may be said to complete his education for a criminal career. Hardened, professional criminals, practically without exception, testify that the juvenile institution stimulated their development in criminal careers. Here new crimes were learned and new ways to commit old crimes. Idolatry of daring, successful criminals was heightened. New habits of vice helped to degrade him still more, whether practiced willingly or forced upon him. And his hatred of law, authority, society becomes a fixation.

Shaw depicts all this vividly in his case study of Stanley, the Jack Roller, showing how the social contacts in juvenile institutions are a medium for the transmission of delinquent codes and techniques from one boy to another.

Inside the Detention Home I found a motley crowd of aspiring young crooks—young aspirants to the "hall of fame of crookdom." In their own minds they had already achieved fame in the world of crime, and proceeded to impress that fact upon the other boys. The whole thing seemed to be a contest, among young crooks, to see who was the biggest and bravest crook. They loiter about the place, congregating in small groups, talking about their achievements and ambitions in their common vocation, crime. The older crooks are gods and

stand around telling about their exploits. . . . I was really awed by the bravery and wisdom of the older crooks. Their stories of adventures fascinated my childish imagination, and I felt drawn to them. My timid spirit (you remember I was only eight) wanted to go out and achieve some of the glories for myself.

During the times I was in the home I met crooks of every creed and color. They were there for every crime, running away from home, bumming from school, taking automobiles, stealing from parents, shoplifting, breaking into houses and stores, petty stealing, and sex perversions. It was a novelty to learn that there were so many crimes and ways of stealing that I had never heard about. I was green at first, and the boys pitied and petted me, but I *was well on the way to Crookdom at the end of my stay in the place.*¹³

Stanley kept "getting educated" in crime with each successive commitment. He speaks of how he "harbored vengeance and hate," how the officials thought they could "beat reform into me" but "I wanted to get ahead in a criminal line instead of being good." By fifteen, he was committed to the Illinois State Reformatory, "mingling in high society." He tells of how he sat in his "cell of stone and iron, dressed in a gray uniform, with my head shaved. . . . Never before had I realized I was a criminal." His conception of his role had by now definitely changed from that of a juvenile offender to that of an adult criminal.

One cannot escape the conviction that this evolution of the gang boy from a minor delinquent or truant, through various stages of hoodlumism and occasional criminality, into a seasoned gangster or professional criminal is a product of the community situation and of the social forces operating it. Delinquents and adult criminals are largely concentrated in characteristic urban areas. These delinquency areas are in a process of transition from residence to business and industry. There population decreases and property deterioration and cultural disorganization occur. The conventional neighborhood culture and organization disintegrate and neighborhood standards and traditional norms weaken and disappear. Not only is community resistance to delinquent and criminal behavior low, it may even be tolerated or approved. The presence of foreigners in these deteriorated areas intensifies the difficulty. The Old World code of the parents is spurned by the children who prefer to follow American ways and ideas. In this conflict of the old and the new former social controls break down and since there are few constructive community forces present, continued social disorganization ensues. In such areas, delinquency and criminality become traditional forms of behavior. Delinquent and criminal patterns are transmitted from one generation to another as is any other social pattern. Since delinquent patterns are dominant here, the attitudes and behavior of those who are raised and live in such areas are shaped accordingly.

Not all boys raised in such areas or who are tutored in the adventurous

¹³ Clifford R. Shaw, *The Jack Roller* (The University of Chicago Press, Chicago, 1930), pp. 57-58.

companionship of a gang become criminals. All adolescent boys and girls develop an interest in finding mates. They want money for what it makes possible in the pursuit of pleasure. These interests, when misdirected, lead to anti-social behavior. The rapidity of social change today makes youth's problem of adjustment more difficult than ever. Nearly over night our civilization has become urban. The combination of an accepted pleasure philosophy of life together with a something-for-nothing attitude so prevalent in America today, the speed and increased tempo of life and the continuous stimuli pouring in on one in our metropolitan centers combined with the difficulty to earn an honest living in this post-war era, all present problems of great difficulty to youth today. Nevertheless, there are those who do get jobs, fall in love, drop their old associates in the gang and finally get married. The new responsibilities are met in a mature way and our potential delinquent becomes a respectable citizen. Life has tricked him into growing up. The boy, however, who does not meet the crisis of adolescence and the challenge of our civilization according to the norms of the social code, who continues his gang life into adulthood, finally becomes a part of that world of organized crime and racketeering which is such a menacing aspect of our American metropolitan life today.

The Social Responsibility for Crime

Behavior is a psycho-social product. Criminal behavior, like any other form of human behavior, represents not merely an individual problem but also, and to a much greater degree, a social problem. Criminality, in every civilization and in every age, will always be a community challenge. There is good reason to believe that every community has about the amount of crime that it deserves. Herein lies the hopefulness of the determinist position. For if the phenomena of criminality depend upon natural causes, then there is the possibility to modify these deleterious effects to the extent that the causes can be modified.

While it is true that crime is always the combined product of an individual and a social factor, there has been such an exaggerated emphasis upon individual responsibility that the social aspects of crime, which should be paramount in our thinking and in our attack on crime, are actually subordinated. The efforts of the sociologist to define crime as a situation rather than merely as an individual act may well be kept in mind in this connection. It avoids the futility of regarding crime emotionally and of overdependence on its corollary, vindictive punishment. It also avoids using stigmas or any prior imputation of free will. As explained before, while a legal definition of crime is necessary, there is no question that it directs attention away from the situation producing the criminal by emphasizing the idea of individual responsibility to such a great extent. What the conventional legal definition does is to abstract the individual law-breaker from the situation, impute free will to him, hold him responsible for his

act and then end up by applying an opprobrious epithet to him—"thief," "robber," etc. The whole matter would be more clear if criminality were thought of as it actually is, namely, a lack of adjustment which involves both the individual committing a crime and the rest of the situation. In the discussion of delinquency areas in large cities, we have seen the significance of this sociological cultural emphasis with regard to the social responsibility for crime. Here we saw how criminal patterns of behavior, individual character and anti-social attitudes arise in social interaction and become anti-social patterns or definitions. The process is exactly the same for the law-abiding person as for the criminal.

There is not much danger that the individual causes of crime will be overlooked for they are firmly imbedded in our moral codes. But the newer concept of crime as a social product will require considerable popular education before it will be recognized and accepted.

The average citizen who suffers from the depredations of the criminal and helps pay our enormous American crime bill, in his impatience to curb these enemies of society who endanger his life and property, commonly pins his faith on a policy of swift and certain punishment as a means of social protection and as a deterrent to criminal tendencies. As we shall see, the results of this hoary procedure are doubtful. The deeper understanding that comes with further study of this difficult, complex phenomenon of crime shows that this method is not either a short-cut or an effective solution of the problem. To be sure, punishment and incarceration of law-breakers must be continued as a temporary expedient, but more central to our problem is the fact that crime is a symptom of social maladjustment, of a social disease of the body politic, and that no permanent reduction in the amount of crime committed in our civilization can be expected except in so far as we improve the character of our entire social system. Clearly, then, the recognition of the social responsibility for crime is of paramount importance. And just as clearly important is the fact that the expenditure of more public money on preventive measures is more in line of progress than continued reliance on punishment of the end-products of our social inadequacy. An analogous idea would be—more money to place a fence around the cliff, then less money will be needed for ambulances at the foot of the cliff. To rely primarily on punishment of the failures of the American home, the school and other social institutions, which is exactly what our criminals are, is rather inconsistent as well as short-sighted.

The age-old emotional, vengeful public reaction to criminals, still so prevalent today, is a natural one. Criminals attack society at its two most vulnerable points, life and property, and this menace to our welfare cannot of course be condoned. This reaction being emotional rather than rational blinds us to a simple fact of importance, namely, that criminals differ from the rest of us with respect to only one phase of their behavior. Their conduct is not adjusted with regard to property or personal security

according to the dictates of the social code. They live according to their own set of social mores and, in so far as they are differentiated into a so-called criminal class, develop a set of habits and techniques, to meet their needs as a group who preys professionally on society. To meet this attack of the criminal class, its members must be recognized for what they are

The modern gangster and racketeer, typical American criminals, have their own way of making a living. Their depredations reflect the larger culture in which they take place. Clearly, crime cannot be realistically thought of as merely a personal, isolated matter of an individual in conflict with the world. It is fundamentally a product of a situation and the end-result of a long process of habituation.

Truly, the amount of crime that burdens our civilization is the crime which our civilization generates, and to understand why we have so much crime it becomes apparent that it is necessary to investigate our society as well as the criminal, to study both the individual and the social milieu to which he is responsive.

CHAPTER 52

ORGANIZED CRIME

What Is Racketeering?

The proprietor of a clothing manufacturing business in a large American city is sitting in his office. Two men, who look as though they might be prosperous customers, are shown in by a respectful clerk. They come to the point at once by informing the owner that they have decided to become his business partners. The latter protests that his business, which he has built from modest beginnings to its present respectable size, is perfectly solvent at the moment and that he has no desire for future expansion or for any partners. The genial expressions of the two prospective partners are succeeded by ugly frowns. This partnership business, they tell him, is their own idea. He had better pay them half the profits of his business in the future "or else." "Or else what?", he asks, now thoroughly aroused. "Or else your machines will be smashed, your clothes will be burned with acid, your employees constantly called out on strike, and maybe something might even happen to your family."

Thoroughly terrified by this turn of events, the proprietor tries one more trick. "What will the police say when I tell them about these threats? I'm a law-abiding citizen and I pay the police to keep racketeers like you out of town." His visitors smiled grimly. "I wouldn't advise you to try anything like that, my friend," said one. "If you did that, something would probably happen to you very suddenly, something you wouldn't like at all. Coming home from work some night, you might wake up full of machine-gun bullets. And anyway, the police won't touch us. We have friends in the city hall who get a cut out of this racket, too. They're not going to let anything slip. So if I were you, buddy, I would just make up my mind to come across with the dough, in large, unmarked bills, the first of every month. And I wouldn't squawk if I were you."

This is not an imaginary picture. Situations like this are happening every day in many of our large American cities. Honest business men are forced to pay tribute to gangsters, backed up on the one hand by the guns of their murderous henchmen and on the other by the corrupt politicians in the city hall. This is one phase of the problem of organized crime. What are the forces in our society that are responsible for this situation in which organized crime and racketeering are accepted as natural phenomena, like death and taxes? How does organized crime affect your life and mine? Is

there anything that can be done about it? These important questions confront us to-day

The word "racket" has come to mean any scheme for making easy money, legal or illegal. It also serves as a blanket definition of "organized crime." The meaning of the two terms is practically identical so that they are used interchangeably. American gangsters are generally designated as racketeers. Having in mind the description of what gangsters do and how a racket works, a racket may be defined as "any scheme of exploitation by which criminal conspirators live upon the industry of others, maintaining their hold by intimidation, terrorism, or political favoritism."¹

The criminal activity of an American racketeer apparently must be regarded as a form of economic enterprise requiring a high degree of organization. Racketeering is a means of livelihood and those who follow such careers develop a professional economic attitude toward their "work" not greatly different from those following more acceptable forms of professional activity. All the available evidence seems to indicate a type of crime prevalent in the United States today with widespread ramifications, involving the cooperative effort of many persons who are either directly or indirectly involved in this business of crime and depend on this illegal enterprise for a part or most of their income. It is an organized social phenomenon, involving often the connivance of politicians and police, as we shall see later, and succeeds in its extensive operations only to the extent that it can defeat the law.

Background and Evolution of Organized Crime and Racketeering

The racketeer has a family tree going far back in human history. Racketeering is based on the sincere conviction of much of mankind that labor is a curse—that "only saps work." Troy may be considered a racket, having preyed on the commerce of the Hellespont, which it controlled. The feudal system in its later days allowed the lord to collect a handsome living with no return to his serfs. The Mafia was possibly the most successful system of exploitation in the nineteenth century. English buccaneers of the Drake, Frobisher, Hawkins school preyed on the commerce of the world.

In America the something-for-nothing complex has been widely prevalent. The lure of gold, the speculation in land, the rush for railroad grants, the public lottery craze, the speculations in stocks were but evidences of a desire to get rich quick without working. If the newly arrived immigrant was not infected at once with the mania for easy money, his children were more responsive. They preferred to organize rackets controlling the distribution of fruit in large urban centers to pushing a cart with fruit and vegetables as their parents had done. Many rural young people, out of work and anxious to get easy money which the movies and sensational news-

¹ John Gunther, "The High Cost of Hoodlums," *Harper's Magazine*, Oct., 1929, p. 530

papers convinced them was to be had in the city, came to join the urban crowd of racketeers. These two groups have provided us with the recruits for the modern army of gangsters and racketeers with which our civilization is faced today.

At about the same time that an ever-increasing number of American youth were being affected by changing economic and ethical conditions, Prohibition came along further to demoralize the situation already existing. Millions of Americans demanded their illicit liquor and violation of the Volstead Act was a wide-spread phenomenon. Enforcement of the law was generally more or less perfunctory. There can be no question that Prohibition provided the gangster his great opportunity.

Prohibition gave impetus to racketeering in two ways. First, the prohibition law and its subsequent general violation created a popular contempt for the law and law-enforcing agencies. At best, it at least created public indifference for the law. Wide-spread corruption of government, municipal, state and federal, was a sequel of the law. In the second place, and possibly more important, was the rapprochement it affected between criminals and the respectable elements in the community. The ranks of crime were augmented by tens of thousands of hitherto law-abiding citizens as active violators of the prohibition law, as distinguished from the purchasers, millions of them, who officially might be considered mere passive violators. The result of this acquaintanceship between the so-called law-abiding classes and the so-called law-breaking classes became apparent in the development of racketeering. The citizen discovered the professional criminal to be much like himself, not a man of a different human breed, but one possessed of business acumen. The net result was that business discovered that crime can be enlisted to the advantage of both.

When the possibilities for easy money in the liquor traffic were gone, the same technique was carried over into vice, dope, kidnapping and the like. Al Capone is an example of this shift. Our contemporary organized criminality and the variety of rackets which beset our civilization have been a natural result. America's genius for organization, outstanding in the modern world, has, since 1919, been applied most effectively to create what has been called the "Golden Age of Crime." The age of mass production of criminals seems to have arrived in America.

The Gravity of the Problem

When Bruno Richard Hauptmann kidnaped the Lindbergh baby, he exemplified the type of crime that prevailed in America previous to the advent of Prohibition. He was the type of criminal that remained true to one type of crime. Criminals in this country at one time followed one special line of law-breaking, much like a craftsman following a given trade in which he had perfected himself. When the Hauptmann technique in crime prevailed, while America even then was the most lawless nation in

the world, law enforcement was a comparatively simple problem compared to what it is in the present world of super-crime. Once the underworld was merely a forest of degradation and not a jungle as it is today. Once a person broke the law and either he was caught or got away. He was not then affiliated in a dozen other kinds of criminal activity, aided by a large group of helpers. Today, however, crime is a matter of many alliances and affiliations and its ramifications are such as to constitute an actual threat to our national safety.

Capone, as America's most notorious gangster, sinks into comparative insignificance when consideration is given to the general system of which he is after all only a part. His incarceration in Alcatraz for income tax evasion affected nothing fundamentally. It is interesting to note, incidentally, that at the very gates of prison he arranged his affairs to carry on, and made "investments" in new rackets more stable than those of the past. Other Chicago gangsters and racketeers, on advice of counsel, hurried to pay their delinquent income taxes! In the crime industry he was just one figure, although an important one, among thousands of others similarly engaged. The roots of organized crime strike too deeply in our American life to be affected by the fate of one exponent of the system. Capone is only preëminent in the fact that he was the first one to shock America into a realization of the significance of contemporary racketeering and raise it to the status of "big business."

A revealing story about this King of Rackets is told by Reeve. A "contact man" of the New York Police Department put the following question to Capone a number of years ago at his famous Miami Beach place.

"Why don't you quit the racket, Capone? You just said you had taken seventy-odd millions out of the game and that your chief worry was how to invest it safely. What more do you want? Why not quit?"

"I can't." Capone's answer was in his usual laconic manner.

The contact man thought a moment—perhaps I had better say did not think, "Oh, yes, of course," he said "I see. You can't quit. They'd get you."

Capone scowled and his dark eyes flashed. He did not even take the trouble to deny with contempt the hasty impeachment. Nor did he hesitate as if he wished he might quit the racket and enjoy life quietly. Rather with a smile of grim pride, he cut loose with, "Why, the biggest bankers and business men and politicians and professional men are looking to me to—keep—the system—going!"

It was a long speech for him. Then he shut up, still with the blandly grim smile.²

Reeve is of the opinion that this little story of Al Capone exhibits America today in all her stark shamelessness. He raises the question whether Capone is just the "front-man" for someone or something far

² Arthur B. Reeve, *The Golden Age of Crime* (The Mohawk Press, New York, 1931), pp. 9 and 10.

more sinister in this chaos we call modern civilization. Or, he asks, are these racketeers of today founding the new aristocratic families of the future here in America? Is this what America's greed for easy money is leading to—more racketeers, and even bigger and better rackets?

The developments of the last decade and a half suggest that the glamorous Capone was but a beginner in the racket business. Those who have succeeded him have gone far beyond the liquor and vice rackets into other fields of even greater concern to the daily life of the average American. Techniques and methods have been refined and care has been taken to establish friendlier, closer relations with politicians. So as to forestall public indignation and demands for the investigation and suppression of rackets, care is taken to run the contemporary variety of rackets as smoothly as possible and with the least violence possible.

This growth of organized crime and racketeering is not fully recognized by the American public for what it is nor for its dangerous implications to our civilization. Meanwhile, this same public is paying out of their pockets in practically every large city and many smaller cities the price of their existence. Courtenay Terrett presents a graphic description of this tale as follows:

John Henry Smith sat down at the Sunday dinner table and cast an appreciative glance at his helpmeet as she distributed plates of soup—cream of mushrooms, it was—to his place, and hers, and those of the three junior Smiths.

After the soup came fried chicken with green peas and artichokes, and then a salad of alligator pear and a bowl of fresh fruit for dessert. It was, observed Mr. Smith, a mighty fine dinner for a poor man's family to be eating, even on Sunday.

Mrs. Smith was pleased at the tribute, but from long habit she sighed. It did seem, she remarked, that things were getting more and more expensive all the time. Would Mr. Smith believe it, but she paid 46 cents a pound for that chicken and it wasn't so plump either? A good housewife, she inventoried the meal for him: the mushrooms had been 60 cents a pound, and she'd used real cream at 26 cents for a little half-pint carton, and the artichokes had been 15 cents apiece and the peas had cost 25 cents a pound.

Really, she sometimes wondered how they were going to keep it up, if things got any more expensive.

Why, even the fresh tablecloth and napkins they had used—goodness knows, she sent everything to a wet wash laundry because it was so much cheaper than a hand laundry, but even so they never paid below \$1.50 a bundle for the wash and sometimes more.

And Edward's suit would simply have to be sent to a cleaner; boys that age were terribly careless. They didn't seem to know or care that even the \$1.00 cleaners charged as much for their suits as a full-grown man's.

John Henry Smith sighed with her. He supposed it was just the steady rise in commodity costs. If only wages would rise in the same ratio, instead of trailing behind!

But John Henry Smith didn't know for all his masculine informativeness, that what he and his wife found such an oppressive financial burden was man-made and artificial and by no means the result of a fundamental economic condition

What they were paying, with such difficulty, was the racket.

They were paying, in other words, their per capita share of the wages of the thugs who beat up Joseph Blank, a Rivington Street poultry merchant, and poisoned the milk of James Coulter, a Putnam County dairy farmer, and smashed the windows of Jerry Piola's fruit and vegetable store in Greenpoint, and beat up Harry Gersch in his \$1 00 cleaning shop, and threw acid on the bundles of dirty clothes in the cart of the St. Clair Independent Hand Laundry. They were paying their part toward the fees of luxury-loving boss racketeers and expensive lawyers. They were paying a little of the graft that is spent for police protection, for political influence, for fixers in the courts.³

There are hundreds of thousands of American families, and particularly metropolitan households, who are being thus unwittingly exploited by a variety of contemporary rackets. The householder pays just a little bit more for this or that which he buys, prices are just a little higher than formerly, but the final total cost to Americans of organized crime and racketeering must be impressive. There is no way, of course, to determine this cost exactly. Estimates have varied widely. The Attorney General of the United States in 1933 gave an estimate of one billion dollars as our annual racket bill. Others estimate that three billion dollars as our annual toll of rackets to be a conservative figure. Barnes is of the opinion that the cost of rackets and organized crime is certainly more than ten times the combined losses from all the traditional types of petty crime.⁴ Mooney makes this appalling cost clearer, perhaps, by his depiction of the racket bill as follows: "No one can state within a billion dollars the take of crime in the United States every twelve months. But a rough comparison may be made as follows. Add up the yearly income of General Motors, United States Steel, the Hearst papers, Radio Corporation of America, The National City Bank and twenty-five other large and powerful business enterprises of the country—and there you have a little over half of what crime and racketeering earmark for their own coffers each year."⁵ No wonder that Mooney says that crime is America's biggest business, that it covers the country as thoroughly as do the highways and railroad lines across the land, and, finally, that it affects the men, women and children of the United States as closely as do dictates of Congress or the President.

Organized Crime and the American Social Pattern

Today the most serious crime problem in the United States is that of organized crime. The ordinary criminal, such as a thief, murderer or em-

³ Courtenay Terrett, *Only Saps Work* (The Vanguard Press, New York, 1930), pp. 75-77

⁴ H. E. Barnes, *Society in Transition* (Prentice-Hall, Inc., New York, 1939), p. 700

⁵ Martin Mooney, *Crime Incorporated* (Whittlesey House, New York, 1935), pp. 6 and 7.

bezzler, usually operates by himself. His apprehension, speedy conviction and incarceration follows without too great difficulty. The problem is different when society faces the other class of modern criminals, the organized groups, working in gangs of indeterminate number. Their field of operation may be primarily a particular community or, on the other hand, they may be nation-wide in their scope of activity.

This ugly phenomenon of organized criminality is no passing problem. It is a condition in our American civilization that is steadily growing more acute and alarming, for never before in the history of civilization have criminals been organized on so large a scale as at present. Indeed, their organization is a remarkably successful imitation of the mammoth business projects of legitimate enterprise. Organized crime can rightly be regarded as one aspect of our money-minded civilization; today it is imperiling the very foundations of legitimate business itself.

Organized crime exists because it finds active support in certain aspects of our social structure. To get rid of the one evil we shall have to alter the other. A crying evil is the existence of an alliance between crooked politicians and other faithless public servants and racketeers. All of these racketeers secure a degree of protection from the police or elected public officials. In some communities only a limited assistance is afforded, in others, the protection is so air-tight that criminals who are members of the organization can prosecute their racketeering activity with impunity. Organized crime and racketeering is careful to seek cordial relations with organized politics. The relationship is mutually advantageous to both parties. Fletcher Dobyns in his book, *The Underworld of American Politics*, reveals an amazing story of the corrupt alliance between politicians and the criminal classes in Chicago which caused the paralysis of all the law-enforcing agencies of the city, "with the result that the city was given over to gambling, prostitution, dope-selling, bootlegging, brewing, 'alky' cooking, smuggling, hi-jacking, racketeering, bombing, and gang warfare, and in every part of the world Chicago had become a synonym for lawlessness and crime. . . . The Mayor . . . threatening to 'whack King George on the snoot,' and constantly bellowing 'America first,' had made the city ridiculous in the eyes of the world."⁶ John H. Lyle, of the municipal court of Chicago, campaigning against William Hale Thompson for the Republican nomination for mayor in 1931, turned the light on the underworld of politics and crime in Chicago. Judge Lyle claimed that the Capone gang had contributed \$50,000 to Thompson's successful mayoralty campaign in 1927 and that, in return, Thompson appointed a close friend of Capone as a member of his Cabinet. He claimed that the real issue was not whether he would be elected, but whether Al Capone was to be authorized to rule Chicago again through the medium of a dummy in the Mayor's

⁶ Fletcher Dobyns, *The Underworld of American Politics* (Fletcher Dobyns, Pub., New York, 1932), pp 101-102.

chair As Lynch points out, Judge Lyle's charges did not astonish Chicago because "in an earlier campaign, according to Loesch, Capone contributed \$260,000 to aid the election of Thompson."⁷ According to Frank J. Loesch, counsel for the Pennsylvania Railroad Co., and president of the Chicago Crime Commission, and member of the National Commission on Law Observance and Enforcement, "It did not take me long after I had been made president of the Crime Commission to discover that Al Capone ran the city. His hand reached into every department of the city and county government."⁸

The crooked politician is the key man in an interlacing network of all kinds of crime and racketeering. "Toward crooked politicians there converge lines of contact from every lobbyist, corruptionist, grafter, gambler and racketeer in the country. The crooked politician 'fronts' for the grafters and gamblers. For a price, he occupies the limelight in the public eye and furnishes protection to those who, in security and secrecy, operate against the public. The business racketeer secretly joins forces with the gunman. And both are a power in politics."⁹

It is encouraging to note some progress in the fight against racketeers. Under Mayor La Guardia and the District Attorneyship of Thomas Dewey New York City has made notable progress in this respect as compared to the days of complete domination of the city under Tammany Hall. Chicago racketeers to whom tribute was paid by Chicagoans to the extent of \$136,000,000 a year, have been facing in recent years new forces of civic protest and organization. The Employers' Association of Chicago was created to do anti-racket work. An aroused citizenry rose up in the "pine-apple primary" of 1928 and got rid of most of the Thompson ticket. Special Prosecutor Frank J. Loesch was appointed to the task of convicting racketeers. The Racket Court was set up as a branch of the Chicago Municipal Court for the purpose of dealing solely with the problem of rackets in the city.

Evidence is conclusive that a great amount of crime in our larger American cities, as well as its character, is intimately related with, as well as reflections of, the kind and character of the political organizations to be found in these cities. The political machine, gangsters and gamblers, city magistrates, the police and local ward heelers, the lawyers who practice in the courts, court attendants and the hangers-on, the "fixers" and those willing to "go to the front" for those who happen to get caught and arrested, the good fellow type of political workers—all are part and parcel of a system which governs our American municipalities. As Frank Tannenbaum

⁷ D. T. Lynch, *Criminals and Politicians* (The Macmillan Company, New York, 1932), p. 22.

⁸ F. Dobyns, *op cit*, pp. 1, 2.

⁹ Ernest D. MacDougall, *Speculation and Gambling* (The Stratford Co., Boston, 1936), p. 2.

well says · "He who would ask the question 'Why have we as much crime as we do have and why do we have this kind of crime?' must first be asked to answer the larger question 'Why do we have the kind of political life that we do have in our larger cities?' The first question cannot be answered without the second. The second question involves an answer to the question 'Why is American civilization and culture what it is?' It is only in terms as broad as these that the questions can be analyzed profitably and usefully."¹⁰ Can it be that, as Morris L. Ernst has said, "The racket owes its life to the democratization of graft and corruption—" ?¹¹

It is a fact, then, that organized crime in America's large cities is tied up with and dependent upon political alliances and favoritism. City wards where vice, gambling, rackets and criminal gangs thrive are under its control. And what is most alarming of all in this sordid picture is that this combination of politics and crime is pretty well in control of the police in these cities. Criminal groups are to be found entrenched in the very heart of our city political machines and through the machines have been able to control the police departments. The Wickersham Commission gives abundant evidence of this phenomenon of control of the police by criminally-dominated political groups. Police chiefs in many cities are but the pawns of such political machines. It is a truism to say no attack upon organized crime and racketeering can succeed without an honest and independent police department. The evidence is clear that police departments are not independent. The root of all this goes deeper than the police department. Since the police have to serve dishonest and corrupt influences, they in turn to a certain extent will become corrupt. The trouble lies with the community itself and the kind of government which it tolerates. As Tannenbaum says: "The way to an independent police force is through an independent and honest political administration. The way to an honest political administration is through a complete change in the mores of our large communities, and the way there is through a change in the ideas and ideals, the habits and practices, of the vast majority of our citizens."¹² Truly, the United States has as much crime and political corruption as it deserves. The American venal politician, corrupt policeman and gangsters and racketeer are in the last analysis but a part of the American community itself.

A few illustrations will serve to throw light on the resulting situation. We have, for instance, the enlightening spectacle of the Arthur (Dutch Schultz) Flegenheimer case, in which the New York police "searched" for three years for him without success, while all the time he was coming and

¹⁰ Fiank Tannenbaum, *Crime and the Community* (Ginn and Company, Boston, 1938), p. 151.

¹¹ C. Terrett, *op cit*, Foreword, p. xiii.

¹² Frank Tannenbaum, *Crime and the Community* (Ginn and Company, Boston, 1938), p. 156.

going about his office in the Bronx "In the Dutch Schultz affair, every dope seller knew where to find him. All the big men in the policy or 'numbers' racket knew where to find him. A ten-year-old boy, studying a correspondence school course in detection and apprehension, could have found him, merely by 'tailing' those close to him until the trail led to the wanted man. But the twenty thousand officers and men of the New York Police Department worked and worked without being able to find Arthur Flegenheimer."¹³ Is there any wonder that Federal officers have expressed the opinion "that local enforcement in many places stinks like dead fish." According to Cooper, all the notorious public enemies like Dillinger, Baby Face Nelson, Thomas Carroll, Homer Van Meter, John Hamilton, John Paul Chase, and others, had their pet cities where they could roam without molestation. This can only mean police departments that are run by politicians who have sold out to the criminal elements of the cities concerned.

The effect of such a condition of affairs upon the morale of the police is disastrous. It is very difficult for honest policemen and detectives to cope successfully with the secret intrigues of higher-ups or the threats of vengeance from the underworld. A common-enough situation is described as follows by a Chicago newspaper: "If the policeman on the beat can't be fixed, the sergeant can; if the sergeant can't, the captain can, if the captain can't be fixed, he can be transferred—that is the underworld's philosophy. The gangsters have the money . . . Policemen who resist the temptation of quick riches are subjected to dozens of harassments. Sometimes they are threatened with death. The latter is the situation with half a dozen police of the East Chicago Avenue station. Anonymous telephone calls have terrified their families and enraged the officers."¹⁴

Under such pressure, it is not surprising that individual policemen find it difficult to remain honest and true to their oath. They cannot remain honest and hold their jobs at the same time in cities where graft to higher-ups is almost openly the price the underworld pays to be permitted to continue a variety of illegal practices. The Hofstadter-Seabury Investigating Committee in New York conclusively proved that some policemen have a working agreement with the criminal class and divide the profits with them. They found one policeman whose salary was \$3,000 per year who was able, however, to bank \$35,800 in two years, a plain-clothes man who had \$83,000 in bank, and a patrolman who had two or three bank accounts and \$50,000 in addition in a safe deposit box. One must not conclude from all this that law enforcement as a whole is crooked. No doubt the average police force in America wants to be honest. With proper backing, a police force could be purged of its police allies of the criminal and racketeer. But, as Cooper says, "If there are ten thousand policemen on

¹³ Courtney R. Cooper, *Here's to Crime* (Little, Brown & Co., Boston, 1937), pp. 73-74.

¹⁴ Quoted from the *Chicago Herald and Examiner*, Sept. 28, 1930, in Frederick Watson, *A Century of Gunmen* (Ivor Nicholson and Watson, Ltd., London, 1931), pp. 231-232.

a force and fifty of them are dishonest, then the whole organization must suffer. If the entire personnel is upright, with the exception of the Chief or the Commissioner, then there may as well be no police force. And if the officers and men are straight, but subservient to crooked political influences, the situation becomes more grave, in that honest men are being suborned into aids to crime"¹⁵

The conclusion to be drawn from all this is that organized crime and racketeering are deeply imbedded in our contemporary American civilization. The alliance of crooked politicians and law-enforcing agencies with the underworld of organized crime reveals the institutional character of contemporary American crime. The sociology of American crime suggests that contemporary American criminality is part of and related to the total American social complex. The hope of any reduction in the phenomenon of American crime rests upon a fundamental, thorough-going reform of the deep-seated conditions which express themselves in our metropolitan centers in alliance of politics and crime, to accomplish this, fundamental changes in American mores and institutions must first take place.

Contemporary Rackets and Their Control

Having placed racketeering in its American framework and setting, we can now look at some of the rackets which prevail in America today. Martin Mooney, in his valuable book *Crime Incorporated*, lists sixteen rackets in which the powerful combine of Crime, Incorporated, exercises control:¹⁶

Pin-ball games	Hot ice (diamonds)
Policy or numbers games	Stocks and bonds
Race tracks	Gambling (dice, cards, lotteries, etc)
Commercialized vice	Produce and other foods
Loan sharks	Garages and automobiles
Night clubs	Abortions
Unions and industrial shake-downs	Gun running and counterfeiting
Real estate	
Narcotics	

He explains that in each of these major subdivisions of racketeering there have developed a number of sidelines. He believes that an actual listing of every detail of racketeering activity would reveal sixty actual rackets which are mulcting billions of dollars from the pocketbooks of American citizens. These may be considered as subordinate rackets within the larger general types mentioned above. Some such rackets are the milk racket, the arson racket, the laundry racket, the venereal disease racket,

¹⁵ C. R. Cooper, *op. cit.*, p. 137.

¹⁶ Martin Mooney, *op. cit.*, p. 37.

the building trades racket, taxi dance halls and "shake" joints, the dope racket, the trucking racket, the dock and wharf racket and many others

These various rackets are organized more or less along similar lines. As was illustrated at the beginning of this chapter, the proprietor of a legitimate business receives a visit from a member of the racketeering gang. He is given the opportunity to pay a certain sum of money for protection. Despite the fact that the proprietor may fail to see the need of such "protection" from danger and may balk at paying the sum demanded, usually he is "convinced" and pays the money. If he remains recalcitrant, destruction of his delivery trucks, or the explosion of a bomb in his place of business, wreckage of his machinery and the like at length convince him that it is cheaper to pay and avoid future outrages. Others in the same business, which the racketeers have decided to organize, receive similar pressure and before long this particular racket is functioning smoothly. The resulting costs of protection are reflected in increased prices to the public. The technique here described is followed generally in all the various rackets existing today.

In the case of the various necessities of life, such as milk, fresh fruit, meat, vegetables and the like, the racketeers may get monopoly control over their distribution. An extra cost is added to the prices charged consumers for these commodities. In other instances, those handling these commodities are compelled to pay protection money. In the fruit and vegetable racket, for instance, the racketeers prevent the unloading of cars or trucks of fruit and vegetables unless the parties concerned are paid up to date for protection. In the building trades racket, contractors will find their nearly completed buildings wrecked unless they pay the tribute demanded. Gowen states that in Chicago racketeers have levied a tax of five cents on each cubic foot of earth excavated through their control of the business of building foundations. The cost of ordinary excavating rose from \$1.45 to \$2.00 a yard in order to get money enough to pay off the racketeers. Even the undertakers of Chicago are preyed upon by racketeers. This racket compels undertakers to rent their hearses from liveries who pay tribute to the racketeers. It tries to prevent citizens from driving to funerals in their own cars. Gowen cites among the results of this racket the stopping of funeral processions, the bombing of undertaking establishments and the burning of an undertaker's garage.¹⁷

Gowen is authority for the statement that in Chicago there is a system by which murder can be bought. Depending upon the prominence of the proposed victim and the risks involved in the job, prices range from \$50 up. An ordinary small business man, a fish dealer for instance, could be murdered for less than \$100 but to kill a prominent business man, city official or newspaper editor would cost from \$5,000 to \$20,000. For ordinary

¹⁷ Emmett Gowen, *A True Exposé of Racketeers and Their Methods* (Popular Book Corporation, New York, 1930), pp. 8 and 9.

jobs a local killer will suffice. In case a prominent person is to be killed, the murderer is imported from some other large city. After doing his job, he leaves immediately, perhaps within the hour. As a result, such murderers are very hard to apprehend or convict¹⁸

One of the most odious of all rackets is the venereal disease racket. Courtney Riley Cooper, in a chapter entitled "Soldiers in Slime," reveals the methods of this racket which operates as an unholy alliance between unethical doctors and racketeers. In bus and railroad stations, hotel lobbies, taverns or wherever men may loaf, there may be found these "steerers" for "good old Doc." Free examination is the bait with which the victims are lured into the quack's office. "The sucker is examined. When he leaves town, he is an entirely different man mentally from the person who, only a short time before, was passing a few hours between trains or buses in a station, lobby, grind-show or tavern. He carries with him the ghastly belief that in some manner, innocently or otherwise, he has become a victim of syphilis. Already, he may have had his first injection of salvarsan or some fake which the racketeer calls "606," with the smiling prediction of the good doctor that after another injection or so plus two years of intra-muscular hypodermics of mercury or salts of bismuth, he will be just as good as new."¹⁹ The most shocking aspect of this vile racket is Cooper's charge that "there are men sufficiently degraded to make good their diagnoses by the actual inoculation of their victims. This is no haphazard charge . . . Like all other rackets it is worked on a percentage basis, professional runners and Shillabers engage in it with the same lack of concern for their victim that a lead-sheep has when it lures a flock into the killing sheds of a packing house."²⁰

As might be expected, racketeers control pretty largely the various forms of organized gambling such as the numbers game, or the policy racket; slot machines and the like. The average "sucker" is betting against overwhelming odds to win because all these forms of gambling are fixed. Gambling, like other forms of crime for profit, is today highly organized, and important to remember in this connection is the fact that no form of organized crime or gambling could exist were it not for the protection of corrupt, conniving public officials.

Most enlightened citizens today consider labor unions and collective bargaining as desirable features of modern industrial relations. They form an inevitable development in modern economic life. Today, however, America also faces the problem of the labor union racket.²¹ It appears that the covetousness and greed, the something-for-nothing psychology which has

¹⁸ Gowen, *op. cit.*, p. 10.

¹⁹ C. R. Cooper, *op. cit.*, p. 231.

²⁰ *Ibid.*, pp. 233 and 234.

²¹ See Harold Seidman, *Labor Czars, A History of Labor Racketeering* (Liveright Publishing Corporation, New York, 1938).

characterized other aspects of our economic life, finally has seeped down from the upper strata of American economic life to the realm of labor. The financial chicanery of a Jay Gould, for instance, today finds a worthy counterpart in our modern "Labor Czars." Today, this aspect of the contemporary American racket must be faced. William Howard Taft stated the problem when he said: "Between the machinations of the lawless manipulator of capital and the aggressions of the lawless leader or agents of combined labor, there is a forgotten man, sometimes described as the public, for whom government and society chiefly exist, who in the clashes between capital and labor, finds himself ground between the upper and nether millstone."²²

Under unscrupulous union leadership all kinds of racketeering flourish. During periods of unemployment such grafting leaders will nevertheless draw huge salaries. They often have irresponsible control over large funds. According to Barnes, the members of a New York local sued its officials to get back \$7,500,000 in union funds which they were accused of having split among themselves. Employers are threatened with strikes unless they pay as requested. Even members of unions have to pay "protection" in the same way business men are victimized by racketeers. Aside from the financial graft of these fake labor leaders, their betrayal of the cause of labor is, if anything, worse. They accept large sums in union dues and then sell out their followers by entering into agreements with employers to defeat efforts at unionization. Treasonable strike-breaking is another commonplace happening. These labor crooks, like other racketeers, are in close touch with political bosses. The efforts of honest unionists to dislodge these racketeering leaders has proved to be most difficult.²³ Loyal henchmen of the racketeers hold the best union jobs. Anti-racketeer critics are denounced as being "anti-union" and are threatened with suspension from the union or loss of job. Open critics of the corrupt "labor czars" at meetings risk violence at the hands of hired thugs. As Seidman says: "Honest unionists, and more than ninety-five per cent of the organized workers are honest, literally take their lives in their hands when they dare to oppose the dictates of the labor czars. Hoodlums, gangsters, and murderers are always at hand to see that the rank and file does the bidding of the union boss."²⁴

Labor racketeering obviously concerns not labor alone. Dishonest labor union leaders, while betraying the rank and file of labor, have been stealing millions of dollars annually from the American consumer. Its complete abolition would benefit everyone except that small minority of employers who do not want to have a system destroyed in which they have

²² Quoted in Edward D. Sullivan, *This Labor Union Racket* (Hillman-Curl Inc., Publishers, New York, 1936), p. 16.

²³ See H. E. Barnes, *op cit.*, p. 145 ff.

²⁴ H. Seidman, *op cit.*, p. 269.

a vested interest. The attorney for a prominent trade association told Seidman: "These fellows are really all right when you get to know them. After all, they are just out for themselves, like you and I. You couldn't expect them to act differently"

"Labor racketeering was born of employer hostility, and it has been nourished by their apathy and greed. Union corruption flourishes today because certain employers want it. If American business men were sincere in their desire to rid the country of labor racketeers, they could do it almost unaided. So far they have made no move in that direction. Nor will they in the future. Employers do not want an honest and virile labor movement." ²⁵

Seidman's point is that greedy employers have found that corrupt unionists could be used as tools to gain their own selfish ends. He claims that there are four separate classes of employers who desire to maintain labor racketeering. First, those who, as Thomas E. Dewey has said, "invite the racketeers to organize their industries to increase their profits at the public's expense." These are really capital-labor trusts. They account for the housing shortages in New York and Chicago, for example. The second group comprise employers who, for the sake of profits, wish to avoid paying their employees a decent wage or maintaining union conditions. Such employers really would like to see all labor unions destroyed but operate on the principle that if there are unions to deal with, they prefer to see them headed by corrupt leaders who will serve as their henchmen. With the collaboration of such union leaders they can compel workers to hand back part of their wages as "kick-backs." Such employers prefer to be saved, not from labor racketeers, but from an honest labor union movement which will result in the abolition of the sweatshop or the achievement of limited working hours and the payment of a living wage.

These first two groups of employers are motivated by sheer greed; the last two groups are possible victims of circumstances. The first of these latter two groups is typically the shoestring operator with insufficient capital. He can better afford to purchase concessions from labor racketeers than to maintain union conditions. With the assistance of the racketeer labor is exploited to avoid bankruptcy. The last group is represented by small employers in such highly competitive businesses as the laundry or cleaning and dyeing industries. The unrestricted competition of our economic system, having as a concomitant the practice of ruinous pricecutting, has spelled disaster to many of them. Since the anti-trust laws prohibit legal regulation of competition by joint action, the labor racketeer has been utilized to organize such industries. Again, we see a capital-labor trust in existence with competition regulated under the aegis of the corrupt union-boss. These associations that have sprung up to offset or minimize

²⁵ *Ibid.*, pp. 267-268

the abuses created by the competitive system have in many instances become out-and-out rackets, with the business man finally becoming a victim of his own racket and being forced to pay tribute to his hired racketeers.

In thirty strategic points in the United States and others in America's possessions, are the outposts of a vast power that has been slowly building to oppose crime. This is the Division of Investigation of the United States Department of Justice. Politics are not tolerated in this organization. This efficient network of trained men, under the direction of J. Edgar Hoover, represents America's answer to the challenge of the underworld of crime. He is the most feared man that the American criminal and racketeer has ever known.

It is not enough for the law-enforcement agencies to take up this challenge of crime. Society itself must undergo a change. In the last analysis, the only fundamental remedy for the alliance of politics and crime, for the racketeer and organized crime, is a resolute and incorruptible public opinion. And this, it would seem, must await a resurgence of American idealism, a moral revolution in our civilization which will repudiate the materialism, the false set of values that has characterized our American life.

CHAPTER 53

THE SOCIAL CONTROL OF CRIME AND THE CON- TEMPORARY MACHINERY OF JUSTICE

The Police

Social control of individual behavior has expressed itself in a variety of forms in human society. Such means of control as gossip, flattery, rewards, propaganda, satire, the calling of names, threats, punishment, are some that immediately come to mind. The earlier stages of social evolution doubtless were without any highly organized mechanism of social control. Personal vengeance for injuries suffered was a common-place method which survives in our own day in lynching and other expressions of popular justice.

The evolution of the state and government resulted in the development of a more complex system of control. Since government operates through law, most modern forms of social control are expressed through the enforcement of law. Generally speaking, the more humane methods of control have survived in the course of social evolution. Today law enforcement aims to secure the deterrence from, and the prevention of, acts penalized by the law.

The modern police system is one of the three parts of the contemporary machinery of justice. In order to defend and protect its citizens, modern society is obliged to maintain officers of the law, a system of courts and also penal institutions that deal with convicted offenders. The first line of defense, however, between society and the criminal element in the population is undoubtedly the police.

Police organization in the United States started in colonial times. The various colonial townships maintained constables. A further development in the police system was the establishment of night watches in the larger cities of the colonies. Boston had a night watch in 1636 and New York in 1658. By 1800 nearly all the larger cities of the Eastern seaboard had the night watch system.

The early homogeneous populations needed but a minimum of protection. With the increasing growth of cities and the accompanying heterogeneity of population resulting from immigration, police problems became much more complex. The untrained night watchman was hardly equal to his increasing responsibilities. It was found necessary to organize a day force or watch as well. In 1844 when the New York legislature provided

by law for the consolidation of the day and night police, the basis for the modern police organization in the United States was established. Both forces were soon placed under a single executive head in New York, and later, in other cities. Standard police uniforms were provided after 1856 in New York and Philadelphia. The New York police organization has served as a pattern for other cities in the country. The watchman, rather than the sheriff, was the forerunner of the modern policeman. Despite many changes in administrative devices, such as methods of choosing men for the force, the appointment of police commissioners, the shifting from municipal to state control in some places, and the like, the internal organization of the police has changed very little. Between 1851 and 1857 organized police systems were established in Chicago, Boston, New Orleans, Cincinnati and Baltimore.

Different political units of course have their police officers. The town marshal, the township constable and the county sheriff are all policemen. So are federal secret-service men and revenue officers or state game and fire wardens and state police. To the minds of the average citizen they are all personified as "the law." The importance of the police with reference to the repression of crime cannot be emphasized too much. Upon the conduct of the police in the prosecution of their duties depends very largely the general respect for law. The other agencies of justice are dependent upon their efficiency and incorruptibility.

In general, the functions of the police in the United States are fourfold: (1) to detect and arrest criminals; (2) to protect the innocent; (3) to prevent crime; (4) to perform certain welfare tasks for society, such as traffic regulation, keeping crowds in order in public places or looking after sanitary regulations and the like.¹ In many ways the policeman is a kind of people's guardian. Fundamentally, his function is the enforcement of law and order.

The most obvious function of the police of course is to apprehend and arrest law violators. Actually, in the common law, the power of arrest was almost equally shared by both policeman and ordinary citizen. Today in the United States, as in England, the policeman has very few rights not possessed by any citizen. Both the citizen and the police may arrest a person committing a crime in their presence. A warrant is required by both in the case of misdemeanors which they have not witnessed themselves. The policeman can also arrest in the case of a felony he has not witnessed, if he has good grounds to believe that the party he arrests had committed the act. An arrest under such circumstances by a private citizen is a dangerous matter; if he is mistaken in his judgment, the alleged felon can sue him for false imprisonment. The officer, on the other hand, is protected in this regard if his reasonable suspicions are found to be

¹ John L. Gillin, *Criminology and Penology*, revised edition (D. Appleton-Century Company, Inc., New York, 1935), p. 525.

groundless. In actual practice, few private citizens ever exercise their power of arrest, in fact, most of them do not realize that they have this power.

The policeman in the performance of his functions, possesses a wide range of power and discretion. In a given situation, he must decide whether to arrest, scold or ignore the parties involved. The policeman thus has it in his power to settle many cases out of court. It is he who determines, in the first instance, who is to be thrown into the machinery of justice. He is obliged to decide what laws are to be enforced, when a law has been broken, when an arrest is called for, and how to secure evidence that will prove his case in court. It is one of the difficult problems of police administration to secure a personnel possessing the tact, wide knowledge and human insight called for in the exercise of the discretion allowed by their powers.

The organization of police departments by American municipalities has been notoriously bad. There is no agreement as to who should head police departments. There has been a variety of forms of control almost as numerous as the cities themselves—control by city councils, independent administrative boards, commissioners of public safety under the commission form of government, commissioners appointed by the chief executive of the city or state, or by popular election. In the larger cities such as New York or Chicago, the control of the police centers in the mayor. The chief of police is in direct command but the mayor, who appoints him, remains the supreme police authority. Authorities on police work seem to agree that the best form of control is to have the mayor exercise sole power to appoint and remove the police commissioner.

The independence of the police department of each city, originally quite justifiable, handicaps the police in doing effective work under modern conditions of rapid transportation and tremendous populations concentrated in metropolitan areas. The criminal commits a crime in one city and his high-powered automobile permits him to escape quickly into another. Despite the fact that trains, ferries, buses and private automobiles make the boundary lines of metropolitan areas indistinguishable and meaningless, the policemen have no authority outside their own jurisdiction. They must appeal to another police department if they wish to pursue a criminal beyond their own city limits. The difficulty is well illustrated in the case of Boston. It has a population of 780,000 but metropolitan or Greater Boston is the third largest urban area in America. Within fifteen miles of the Boston Common there are forty independent police departments with forty administrative heads and forty different police policies. No better example could be found of the need of coordinated police effort in a modern urban area. As Tannenbaum remarks: "Thus, though consolidation is practicable, as proved by the forces of metropolitan New York, London and Los Angeles, and though it would result in economy

and greater efficiency through improved facilities for recruiting and training and would end in the provision of specialized services which small departments cannot afford, Boston with its forty forces, like Greater Chicago with its three hundred and fifty conflicting police forces, and Greater Cincinnati with its hundred and forty-seven police agencies, still awaits a form of organization which will put it on equal footing with the criminal." ²

The inefficiency of our American city police is a notorious fact. They do not compare favorably with the police of other nations. American political conditions are partly to blame, as has been suggested in a previous chapter. If corrupt politicians and racketeers control the police department, the police will be helpless. If the system itself operates in a lawless manner, this is sure to be reflected in various forms of lawlessness by the police themselves, such as graft, bribery, and collusion with professional criminals. Illegal and unnecessary arrests are another aspect of police lawlessness. The Seabury Committee in New York uncovered a flagrant example in connection with the vice squad which had been exploiting innocent women on charges of prostitution.

The brutal violence of third degree inquisitions, a quite common practice of police lawlessness in our large cities, does not increase public respect for our uniformed officers of the law. The Constitution of the United States is supposed to protect the citizen against loss of liberty without due process of law. Yet great numbers of citizens, who are arrested, are not brought before a magistrate without delay but are "sent around the loop," i. e., shifted from one station house to another for three, four days, or even longer, during which time they are subjected to the third degree. The Wickersham Commission found that the police obtain confessions by this method in about five cases to every one that is convicted legally in court. The methods of "shellacking," "massaging," or "giving him the works" are used by the police to refresh the memories of their reluctant prisoners.

One unusual example of the third degree will illustrate to what length police will go to make their victim talk. The prisoner in question, a young, powerful Pole of twenty-five years, answered the description of an assailant of a rival in a love affair. The detectives were practically exhausted from their physical efforts to make the Pole admit the assault. After belaboring him with a rubber hose until the perspiration poured from them, the detectives were about to give up trying to make him confess, when a dentist friend of the force happened to drop in at headquarters. This suggested taking him to the dentist's office. Lavine's description follows: "When he was tied more securely and hopelessly than a wild steer at a Madison Square Garden rodeo, the dentist carefully selected an old dull drilling

² Frank Tannenbaum, *Crime and the Community* (Ginn and Company, Boston, 1938), p. 232

burr and began slowly drilling into the pulp chamber of a lower rear molar in the region of a nerve.

"As he got down deep into the area, he kept turning the burr from side to side. The Pole squirmed in agony, and the perspiration poured from his face and neck in copious quantities" ³

Suffice to say, that the Pole "talked" and carried a neatly filled molar with him to Sing Sing.

The most commonly used method is that of persistent questioning, hour after hour, by relays of officers. Loss of sleep finally produces any confession that may be desired. The use of powerful lights on the victim's face, whipping, beating with a rubber hose or club, kicking, taking the prisoner to the morgue to touch the body of the man he is supposed to have killed, are other methods in use.

The Survey of Criminal Justice in Cleveland, after examining the entire police force by the Army Alpha Intelligence Tests in 1921, came to the conclusion that the ineffectiveness of police work was largely owing to the lack of quality of police personnel. A surprisingly low proportion of men in the upper intelligence levels, both among officers and among patrolmen, was revealed. Only 16% of 979 men had more than average intelligence. More than 25 % of the patrolmen were of quite inferior intelligence and only 33% of them had average intelligence. These figures indicate that 58% were in a class in which the best were mentally incapable of finishing a high school course and the worst were morons. If it is fair to assume that the police of Cleveland are not inferior to or different from those of other cities, then there is justification to regard these results as representative of police ability in general. ⁴ This situation reveals the great need for police training schools and for better methods of selection and promotion of recruits. The police as a group should be more intelligent than the criminals as a group. Prof. Carl Murchinson has found as a result of his studies that convicts are as intelligent as the men in the army. Since convicts are the stupid minority among the criminal class as a whole, then most likely the criminal class as a whole is superior in native intelligence to the police.

This may account for the fact that such a large proportion of criminals is never arrested. In New York state in 1930 there was, on the average, one arrest for every six crimes reported. The report of the New York Crime Commission in 1927 found an exceedingly low percentage of arrests in various cities of the state. In Rochester, for instance, arrests for burglary were made in only 12% of the total burglaries officially reported by the police. In Buffalo only 3% and in Schenectady 10% of the reported robbery cases resulted in arrests. This is a state of affairs that dare not be allowed

³ Emanuel H. Lavine, *The Third Degree* (The Vanguard Press, New York, 1930), p. 63.

⁴ Fred E. Haynes, *Criminology* (McGraw-Hill Book Company, Inc., New York, 1935), pp. 98 and 99.

to continue America needs a police force equal to the situation it faces.

What can be done to remedy the present state of affairs? Barnes suggests that the police force should be divided into two groups: (1) those who carry on routine inspection and patrolling, and (2) those specializing in crime detection. The quality, payment and integrity of the first group should be bettered. Municipal engineers should be called on to assist the police with traffic problems, which are not primarily a proper police function. It is, however, the second group that demands special attention. Those comprising this group should consist only of superior, well-educated men—preferably college-trained men. They should have thorough training in criminology and allied sciences. Whereas Europe has had police training schools since 1883, effective training of police in the United States did not begin until 1914 when Chief Vollmer of Berkeley, California, started his famous Berkeley School for Police in connection with the University of California. Commissioner Woods was responsible for developing a training school in New York City, comprising a two months' course of instruction. The police, too, should be appointed only on the basis of civil service examinations. Politics should absolutely be barred from the prosecution of their duty. Only ability and a worthy record should enter into the matter of promotion. All the latest scientific devices and equipment should be available in their pursuit of criminals. It is a matter of educating the public to demand such a police force. What Chief August Vollmer has been able to do in Berkeley, California, can be duplicated elsewhere, if city governments are willing or can be made to lend their support by the force of public opinion.

When such a fearless, competent police force is turned loose by society on crookdom, vastly different results will follow than exist at present in the apprehension of the enemies of society who are running up year after year our huge American crime bill. Obviously, society's first problem is to catch the criminal. There can be no end to the criminals' onslaughts as long as they can escape arrest. The experience of England and other European countries proves that greater certainty of arrest has a tremendous restraining influence upon criminals. Europe does catch its criminals. The work of J. Edgar Hoover in the Bureau of Investigation of the Department of Justice promises to provide America a quality of crime detection comparable to that of Scotland Yard in England. Certainly, all further programs of punishment or treatment of criminals wait upon an efficient police force capable of "getting their man."⁵

It remains to be said, however, that any talk or efforts to improve our police system will be effective only with regard to the lesser, small-fry, conventional criminals. A realistic attitude concerning the possibility of repression of the more important forms of contemporary criminality, or-

⁵ See Harry E. Barnes, *Society in Transition* (Prentice-Hall, Inc., New York, 1939), pp. 515-517.

ganized criminals and racketeers, forces one to recognize the fact that better police systems still leave this problem largely unsolved. It is important to realize the truth of the fact that the higher-ups in the world of crime at present are seldom arrested and rarely convicted.

Aside from this fundamental problem, there is the need to adjust this aspect of our machinery of justice to twentieth-century conditions. The democratic "cult of incompetency" must yield to one of efficiency in an urban, industrial democracy. Roscoe Pound believes that there is no intrinsic reason why democratic institutions should be inefficient. The unique record of Milwaukee with respect to its police force shows what can be done to improve efficiency. The city has had only two chiefs of police over a period of forty-six years. Politicians are not allowed to control or remove the chief. A popular uprising against such an attempt by politicians to meddle in the police department settled the matter decisively. As a result, Milwaukee has an enviable record with regard to the prompt discovery, arrest and trial of offenders and its consequent relative freedom from crime. What Milwaukee has accomplished can be duplicated elsewhere in democratic America. The spirit of the community is an all-important factor.⁶

The main troubles with American police departments are: first, many municipal police departments do not have the technical instruments that are essential—communication systems to keep in touch with officers on the beat, ballistics bureaus, chemical laboratories and the like. Secondly, many American police forces lag far behind European nations in "police scientifique." In place of a skillful technique of investigation, the use of stool pigeons, the "third degree," trial-and-error methods or mere chance are still relied on. Thirdly, in the laying out and patrolling of beats, no accommodation is made to meet new conditions by American police organizations. Beats designed for residential sections remain unaltered when they are transformed by the invasion of industry or commerce. Beats also are not adjusted to the economic, racial and cultural aspects of different localities. A fourth weakness pertains to the inefficiency of internal organization. Division of responsibility for related activities among a number of bureaus and officials, with little or no coördination between them, results in unsystematic planning and poor, uneconomical use of personnel. Fifthly, in place of an efficient, centralized police power, as exists in Europe, America presents a picture of complete decentralization. Instead of having a centralized and responsible police head in each state, there exist state, county, city, township, police as well as those of the federal agencies. The result is much duplication and conflict of jurisdiction. The danger of abuse of power of a centralized police authority must be considered. This should be less in a democracy than in Europe.

⁶ National Commission on Law Observance and Enforcement, *Report on the Police* (Government Printing Office, Washington, D. C., 1931), p. 3

The final and most serious indication that American police systems have been failing to meet the needs of the times is their failure, with a few outstanding exceptions, to establish crime prevention bureaus. The pioneer efforts of Arthur Woods and August Vollmer to make the police agencies of crime prevention have not been duplicated elsewhere. "The typical police office still limits its functions to the traditional activities of patrolling beats and apprehending suspects. To it 'crime prevention' has no meaning of protecting wayward children, preventing the origin of criminal careers, extricating children from the pitfalls of modern city life, rooting out the breeding-places of crime." American police departments must adjust themselves to changed times if they are to meet successfully their current responsibilities.⁷

Criminal Justice in the United States

There is some variance in the methods and forms of legal procedure in criminal prosecutions in the different states of the union. These differences are, for the most part, quite superficial and formal so that substantial uniformity in American criminal procedure may be said to prevail.

There has been much criticism of criminal justice in America. The charge of William Howard Taft in 1909 that "the administration of criminal law is a disgrace to our civilization" has often been repeated. Crime commissions, bar associations, judges, criminologists, sociologists and journalists have offered criticisms in the hope of improving the efficiency of the various agencies of criminal justice. As a result of these attacks, some improvement has been made in speeding up the various steps in trial procedure. Current reforms which attempt to correct patent abuses or faults are good as far as they go. The trouble fundamentally, no doubt, lies deeper than merely obvious factors. The decentralized agencies of criminal administration, adapted to the needs of the eighteenth and early nineteenth century when America was a relatively homogeneous, rural, agricultural country, no longer work with any degree of success today.

The Preliminary Hearing

The various steps in trial procedure may well be taken up for consideration and critical evaluation in the order in which our supposed criminal meets them.

After a person has been arrested and confined in jail for several hours, or possibly over night, he is brought before a police or magistrate's court. The law generally provides that a person charged with committing a misdemeanor be tried before a magistrate in twenty-four hours. For such minor offenses as vagrancy, drunkenness and the like, the case is settled by the magistrate who either discharges or finds the defendant guilty after a very brief trial, usually of only a few minutes. Witnesses may be sworn

⁷ Sheldon Glueck, *Crime and Justice* (Little, Brown and Co., Boston, 1936), pp. 34-38.

in to testify in the case but usually only the policeman making the arrest testifies against him. The accused puts up the best defense he can on the spur of the moment, usually without aid of counsel. The penalties imposed are usually small ones—ten dollars or ten days. Appeals can be taken but seldom are. If the defendant can pay his fine, he goes free; otherwise, he is sent to jail for a period.

In the case of more serious crimes or felonies such as burglary or grand larceny, the magistrate or police court does not have summary jurisdiction as he does in the case of minor crimes. The procedure is more complicated in this instance. A person charged with a felony is detained in jail until he can appear before a magistrate for a preliminary hearing. The purpose of the preliminary hearing is to determine whether or not a felony has been committed and whether, on the basis of evidence submitted by the prosecuting attorney, there are reasonable grounds to believe that the defendant is connected with the commission of the crime. If the magistrate so decides, he commits him to jail to await grand jury action, otherwise, the defendant is released. According to the Constitution of the United States, no one can be prosecuted for a felony without a grand jury indictment.

The magistrate or police court is a very important cog in the machinery of criminal justice. Many consider it to be the most important criminal court in the state. Not only do all felons generally first appear in this court but a majority of felony cases are also disposed of in these lower courts. According to the New York Crime Commission Report of 1928, 55.7% of cases were terminated in preliminary hearing in 1926. Thus are groundless cases eliminated by the magistrate and the higher courts prevented from being cluttered up with cases.

The rights of the defendant are amply protected. The magistrate upon arraigning the defendant must inform him of the nature of the charge against him, that he has a right to counsel and also a right to waive examination. He is informed as to his rights regarding bail. He can require the state to summon witnesses who must be heard in his presence and are subject to cross examination.

A blue-print description of the court of the magistrate is one thing, "the grimy court of the magistrate," in practice, is quite another thing. According to one commentator, the value of the preliminary hearing is negligible with regard to securing a dependable record of the testimony of witnesses. In a great many of these courts no stenographic record is made at all. Then, too, the very physical conditions surrounding the preliminary hearing in most large cities destroy much of its supposed value. The court room is usually crowded by all sorts of people. Noise, disorder and confusion prevail. Cases are heard with such speed that an orderly presentation of evidence is hardly possible. "A casual, careless and unintelligible presentation of evidence precedes a hasty guess of judgment."⁸

⁸ Raymond Moley, *Our Criminal Courts* (Minton, Balch & Co., New York, 1930), p. 29.

Moley points out that the most serious side of all the confusion present at the preliminary hearing is that protection of the public interest against back-stair wire-pulling and fixing is defeated thereby. "The magistrate can usually be consulted by all sorts of persons, many of whom have no proper interest in the case. He is almost unprotected so far as political influences are concerned and the political factors involved are very great. Machine politics is always heavily entrenched in the inferior courts. If there is to be any fixing of criminal cases, the wise and effective politician does his work here. He is protected by confusion and haste, and he deals with but one person. If his case slips through the preliminary hearing, his task is multiplied manifold. He must deal with more persons in a more rarefied atmosphere . . . Consequently, the forces which so often effectively prevent the adequate prosecution of professional criminals concentrate their strength upon the preliminary hearing. The weakest spot in the system is the one at which greatest pressure is directed."⁹

The Judge Seabury investigation in 1932 into the operation of the magistrates' courts of New York City definitely revealed that "the demoralization of the Magistrates' Courts resulting from the political considerations governing the appointment of Magistrates finds expression not only in the subserviency of the Magistrates to the dictation of politicians in the disposition of court business, but also in the very type and quality of the men appointed." Professional criminals and racketeers who have political protection have thus escaped conviction and will continue to escape conviction as long as the American public permits such corrupt and sordid conditions to prevail in our magistrate courts. The Seabury Committee's recommendation that magistrates should be appointed by the Appellate Court would no doubt result in a better type of magistrate.

Bail or Jail

Generally a defendant who is not released by the committing magistrate need not remain in jail to await grand jury action. He may be released on bail if he can give a bond for his return. The right to bail is a constitutional guarantee in thirty-five states in all cases except capital charges.

The purpose of bail is to guarantee the defendant's appearance in court when wanted by requiring him or his sureties to provide security, either in the form of cash or real estate. This security is forfeited to the State if he fails to appear and the defendant can forthwith be taken into custody. Thus, the State is supposed to be assured of a maximum of certainty as to the accused person's appearance while at the same time imposing a minimum of restraint upon him.

A number of justifiable criticisms have been made of bail-bond administration. In the first place, bail, as administered in this country, does not bind. Bail records show a very low percentage of collections on forfeited

⁹ *Ibid*, pp. 29 and 30.

bail bonds. This is particularly true when the bonds are written by professional bondsmen. These bondsmen can be found in practically all the courts in urban communities. Often they are in league with court officials, who receive a "cut" for recommending the name of the bondsmen to the defendant. These unscrupulous bondsmen exact as high a fee as possible, sometimes up to 20% or more of the amount of the bond.

As Moley points out, bondsmen are able to operate on almost unbelievably inadequate resources because the obligation of bail is held so lightly under the law and its administration in most American cities. He cites the classical example of this in the case of Bondsman D, a professional. He claimed real property to the value of more than \$20,000 but there were encumbrances on this property to an amount greater than its assessed value. The uncertainty of his financial condition was further evidenced by the fact that he was delinquent in his taxes, that there was a claim for income taxes pending against him by the federal government, that \$30,000 was outstanding in forfeited bonds, and that his police record showed twelve arrests on minor charges. In spite of such facts, he had been accepted in the state courts of the city of St. Louis in one year for bonds aggregating \$670,295. His compensation is estimated by Moley to have been in all probability not less than \$33,000 and may have been as high as \$100,000.¹⁰ The fact is that all too often the security offered by the bonds of professional bondsmen is to a great degree worthless. The same property is often pledged as security for a large number of bonds. As the Seabury Committee indicated, there is at the present time no provision for investigation into the actual value of real estate offered for security nor is it possible to know in how many places the same property has been pledged because there is no exchange of information between the various courts. Such evidence as this indicates the futility of the bail system as now administered.

Perhaps the worst feature of the bail-bond system's operation, however, is that professional criminals are thereby allowed to go free while awaiting trial, thus permitting them meanwhile to continue their criminal activities which their arrest had interrupted. Tannenbaum claims that "Sometimes the professional criminal must get back on the job in order to pay the bail-bond fee of the professional bondsman!"¹¹ The bail-bond system does not appear to be a protection against these dangerous enemies of society. On the other hand, a harsh and unfair feature of the system is that the innocent poor, who cannot afford a bond fee, must remain in jail to await trial. The same is true of those charged with minor crimes. No security would really be necessary to assure their appearance in court

¹⁰ Raymond Moley, *op cit*, pp. 49 and 50. See also *The Missouri Crime Survey* (The Macmillan Company, New York, 1926), pp. 211 and 212.

¹¹ Frank Tannenbaum, *Crime and the Community* (Ginn and Company, Boston, 1938), p. 280.

but they are nevertheless kept in jail if they cannot furnish bail for their appearance.

Suggestions have been made for reform of the bail system. In some cities one bureau is put in complete control of all the work in connection with granting bail, recommending forfeitures, and collecting forfeited bonds. Such a plan would prevent bondsmen from "peddling" bonds from one court to another. It would also insure a better inspection of securities so that bonds could be kept within the value of the securities listed. Such a bureau, by being responsible for investigation of the character of the defendant, could determine whether release should be given without financial security, with heavy security, or possibly without any conditions whatsoever. Obviously, too, jumping bail should be made a crime.

The defendant, charged with a felony, who must remain in detention awaiting the grand jury's action, either indicting or discharging him, is usually put in the county jail. It may be weeks or months before the grand jury finally acts. Opinions of all investigators of our American jails are unanimous in condemning them as the worst aspect of our penal system. The sheriff who has charge of the county jail is usually a politician who knows nothing about penal administration. The standards of caring for jail populations have been so low that the federal government has refused to place federal prisoners in many jails. The physical conditions in most jails are appallingly bad. The most trenchant criticism that has been made of the American jail is Joseph Fishman's *Crucibles of Crime*. The author was for many years Inspector of Prisons for the United States Government. Writing in 1923, he defined a jail as follows: "Jail: An unbelievably filthy institution in which are confined men and women serving sentence for misdemeanors and crimes, and *men and women not under sentence who are simply awaiting trial*. With few exceptions, having no segregation of the unconvicted from the convicted, the well from the diseased, the youngest and most impressionable from the most degraded and hardened. Usually swarming with bedbugs, roaches, lice, and other vermin; has an odor of disinfectant and filth which is appalling; supports in complete idleness thousands of able bodied men and women, and generally affords ample time and opportunity to assure inmates a complete course in every kind of viciousness and crime. A melting pot in which the worst elements of the raw material in the criminal world are brought forth blended and turned out in absolute perfection."¹² Fishman admits that exceptions exist in both the smaller and larger towns. His work as inspector of prisons, however, took him into every state of the union and he believes that the above description is applicable to fully 85% of the jails throughout the country. Many criticisms of jail conditions have been made for nearly a century by both American and foreign in-

¹² Joseph F. Fishman, *Crucibles of Crime* (Cosmopolis Press, New York, 1923), pp. 13 and 14.

vestigators. In 1907 the president of the International Prison Congress said that nothing as bad as the American jails existed in the entire history of the world with the exception of the prisons of Turkey in the thirteenth century! To permit the association of convicted with unconvicted prisoners (approximately half of the inmates of county jails are there awaiting trial) under present-day jail conditions is a denial of all justice and decency.

Sutherland is of the opinion that it is possible, though by no means certain, that there is a slight trend in the direction of better physical conditions in our jails.¹³ Some exceptional jails do exist where conditions are very good in practically all respects, many undoubtedly there are where conditions are good in some respects. In a federal investigation of 2,894 county jails throughout the country (July 1930-June 1935) only 16 received a grade of 80 or over, 1,772 did not merit even 50% and 985 others rated between 50-59%. In other words, 2,757 jails (95.2%) were rated under 60%. In 1938 the National Jail Association was founded to do something about our existing unsatisfactory jail system.¹⁴

The Grand Jury and the Indictment

Both the federal government and twenty-four states require that after the preliminary hearing before the committing magistrate a second proceeding by the grand jury is necessary to pass on the sufficiency of the charge against the accused. The grand jury consists of thirteen to twenty-three laymen, of whom at least twelve must concur in indicting him or returning a "true bill," as it is technically called.

The desirability of the grand jury indictment has been called into question for many years. As far back as 1825 Jeremy Bentham claimed that the grand jury indictment was unnecessary and without value. The grand jury, of course, is an historic institution of Anglo-American law. The necessity of the technical accuracy of an indictment dates back to the time when it was the only way of guaranteeing the individual against arbitrary and tyrannical executive authority. Opinion seems to be growing that the grand jury today is quite out of date. The rights of the individual are now adequately safeguarded without a grand jury indictment. Possible abuses of legal authority and judicial discretion under our present court system are subject to appeal and review.

Our court system was worked out at a time when there was a great deal of oppression. The result has been that many defects of our present American court system are the outgrowth of these early efforts to protect the defendant when the whole court system was weighted against him. The legal requirement that the indictment must be 100% correct, very

¹³ Edwin H. Sutherland, *Principles of Criminology* (J. B. Lippincott Company, Philadelphia), p. 268.

¹⁴ Nathaniel F. Cantor, *Crime and Society* (Henry Holt and Co., New York, 1939), pp. 80 and 81.

useful once, now has become a serious loop-hole by which shrewd defendants are able to escape justice. Examples could be cited *ad infinitum* to illustrate to what absurd lengths the use of technicalities has gone in the United States. Time and again we find cases where the omission of a word like "the," "an," or "and," the omission of a Latin phrase or the misspelling of a name, is sufficient cause to free an otherwise guilty defendant. The absurdity of the regard for technicality is indicated in a case where the indictment read, "Lee Look had feloniously . . . murdered Lee Wing." Since it was not alleged, according to the statutory provision, that Lee Wing "was a human being," the higher court of appeals reversed the conviction of the lower court on this ground. In Delaware a decision was reversed in a case in which a man was convicted for stealing a "pair of shoes" because "the evidence showed that both shoes were for the same foot." It appears that there is a present tendency for judges to disregard such technicalities, even at the risk of having a higher court overrule them. This obvious abuse of justice may at length be eliminated.

Conviction is growing that the grand jury has outlived its usefulness. Twenty-four states have done away with it as a necessary step in the prosecution of most crimes. In these states, by constitutional provision or by statute, offenses, formerly indictable, are now prosecuted by the district attorney merely filing an information. Connecticut has permitted the initiation of prosecutions by information in most felony cases for almost a century. At present only twenty-two states require indictments in all felony cases. In three of these states the accused may waive the grand jury hearing if he so desires. In nineteen states indictments or information may be used in all felony cases. Seven states require indictments in certain felony cases but in other types of felony cases initiation of prosecution by information is permitted.¹⁵

It is contended that when the grand jury returns a "true bill" it is merely duplicating the work of the magistrate. The grand jury thus may be permitting an evasion of responsibility by the magistrate who, instead of weighing the evidence carefully and reaching a decision in a doubtful case, places the burden of decision on the grand jury. Then, too, authorities agree that the grand jury is merely a rubber stamp for the district attorney. If, as seems to be true in the majority of cases, the grand jury merely follows the recommendations of the prosecuting attorney, who almost invariably dominates it, then it has become in fact merely a gratuitous body. The requirement of this second preliminary hearing through the grand jury causes delays in the prosecution of crimes. Such delays are favorable to the cause of guilty defendants because witnesses may disappear or leave the state. They cannot be extradited by the court in such circumstances. Witnesses can also be approached in the interim between pre-

¹⁵ Sutherland, *op cit*, p. 282

liminary examination and trial and be influenced by the use of money or by intimidation. The delay is also the cause of great hardship to the poor but innocent defendant. The requirement of a grand jury hearing increases the period the defendant who cannot raise bail must spend in jail awaiting trial.

The American Law Institute, which has compiled a Model Code of Criminal Procedure, recommends that prosecution by information be extended to all states. This system whereby the prosecutor initiates proceedings by a simple statement concerning the offense, the time and place of its commission, and the person against whom it is charged, has proved in practice to be more efficient and less expensive than prosecution by indictment. The evidence seems to show that it is more satisfactory in all respects than the grand jury indictment.

The Wickersham Commission's conclusion regarding the grand jury seems sound. The Commission claimed that "the requirement of indictment by a grand jury in all prosecutions for infamous crimes involves a number of needless procedural difficulties which do not obtain in a régime of prosecution by information. Thus an indictment cannot be amended, while an information may be. There are statutory requirements as to the drawing and composition of grand juries which frequently give rise to dilatory objections to the indictment. There are necessary rules as to the procedure of grand juries, and in particular as to who may be present during their inquiries and deliberations, which likewise offer opportunities for dilatory objections. Today the grand jury is useful only as a general investigating body for inquiring into the conduct of public officers and in case of large conspiracies. It should be retained as an occasional instrument for such purposes, and the requirement of it as a necessary basis of all prosecutions for infamous crimes should be done away with."¹⁶

¹⁶ National Commission on Law Observance and Enforcement, *Report on Prosecution* (Government Printing Office, Washington, 1931), pp. 36 and 37.

CHAPTER 54

THE SOCIAL CONTROL OF CRIME AND THE CON- TEMPORARY MACHINERY OF JUSTICE

(Continued)

The Public Prosecutor

There is no question that at present the key figure in the administration of criminal justice in America is the public prosecutor. He is variously designated in different states as district attorney, prosecuting attorney, county attorney, state's attorney, etc. But whatever his name, his powers and duties are everywhere the same. Commonly, the public looks upon the public prosecutor as the representative of the people who has the primary duty to see to it that *all* violators of the law are brought to account. If a law has been broken, his legal duty is clear. The statute law of his state enjoins him to commence proceedings against the violator and to take such necessary legal steps as to bring about his conviction. Upon his efficient and honest performance of this function depends the successful enforcement of the criminal law.

With regard to his powers, Sheldon Glueck is probably correct when he claims that "it is little exaggeration to say that the prosecutor has more power with less accountability than any other officer."¹ He issues in some jurisdictions warrants of arrest. He dominates grand jury proceedings and he can, accordingly, influence the bringing in of indictments either in one direction or another. He has almost unchecked authority to dismiss even very serious cases through the comparatively little-controlled device of *nolle prosequi*. He can thus refuse to prosecute without giving reasons. His power to bargain with the defendant as to the charge to which the accused will plead guilty is virtually unlimited. Such a power, it is obvious, lends itself easily to corrupt use. He can influence the sentencing procedure of the courts by legitimately presenting mitigating and aggravating circumstances or even going to the length of exerting subterranean pressure. The Continental prosecutor is merely a figurehead in comparison with the American prosecutor.

It is well to bear in mind that most of the foregoing instances of discretionary power concern cases already commenced and prepared for trial. In these instances the prosecutor acts openly and the possibility of some

¹ Sheldon Glueck, *Crime and Justice* (Little, Brown and Co., Boston, 1936), p. 144.

record of his motions or recommendations exists. But consider how much more significant would be exact knowledge of the situations which arise and are disposed of behind the closed doors of the prosecutor's office! "A farmer phones in that someone is stealing his apples. A citizen reports that X has threatened to kill his father-in-law. Heart-broken wives report the derelictions of their husbands and sometimes a husband reports the wife. Boys trespass and pester people, committing petty thefts. Girls become wayward and bastardy proceedings result. People tell lies in spasms of anger. All must be settled by the prosecutor, the 'father confessor' for the community. . . . Few charges were formally filed but by threats, advice or sympathy a score of cases have been disposed of with no grand jury, trial or judicial decree."² Such "office disposal" of cases is undoubtedly that aspect of a prosecutor's work which receives the least but is worthy of the greatest attention. How necessary it is that a prosecutor be honest, wise, capable of exercising good judgment and possessing ability for friendly counsel, would be realized more clearly if some conception were had of the average day's work in a prosecuting attorney's office. The district attorney needs to be at one and the same time a criminal investigator, a judge, a solicitor, and an advocate. In view of the importance of the prosecutor's office for the administration of criminal justice and the variety of functions performed, it would seem that every effort should be made to secure only honest and competent incumbents to the office. The customary pattern of American political life whereby prosecutors are selected very often defeat the end of obtaining men with proper capacities and qualities. Almost everywhere in this country he is elected locally, by county or district, to serve for a short term, usually two to four years. Generally, only the younger and more inexperienced members of the bar seek the office. They do not consider the office an end in itself but rather merely a stepping stone to higher political offices or to better private practices. The results of this can only be unfortunate. Amateur administration of this important office is one result. Possibly still more serious is the fact that the office is plunged deep into politics. The district attorney who is subservient to the political leader finds it practically impossible to remain honest, independent and fearless in the performance of his duties. The close alliance of corrupt political machines and criminals in urban communities has been mentioned previously. Since these criminals support the political machine at election time, contribute to campaign funds, they in turn expect protection in their illegal activities. As will be seen later, here is where the prosecutor's wide power over criminal cases comes into play. When orders come from above to quash embarrassing prosecutions, if the district attorney owed his election to the machine, he can hardly do other than "take care" of criminals who enjoy the blessing of the political machine. This explains why integrity,

² Newman F. Baker, "The Prosecutor-Initiation of Prosecution," *Journal of Criminal Law and Criminology*, 23: 782 (1933)

independence and energy are not wanted or permitted, if possible, in the office of public prosecutor.

What is the actual situation today? Do we have able, honest defenders of the public interest in this all-important office? The various crime surveys have been anything but flattering to prosecuting attorneys. The most trenchant statement on this point of the caliber of our American prosecuting attorneys is that of Sheldon Glueck, of the Harvard Law School. According to him, "The political background of the vast majority of prosecutors, and the obligations they assume in coming into office, have led to disclosures of atrocious conditions. Chicago, New York, Boston are only some of the leading cities of the nation that have in recent years been regaled with appalling spectacles of the iniquitous alliance of prosecutors with leaders of criminal gangs, vice-ring operators, blackmailers, or dishonest lawyers. Racketeers and gangsters have won long-standing immunity, innocent women have been 'framed' as prostitutes and 'shaken down' of all their possessions, innocent men have been blackmailed. It has taken ingenious and daring investigations to bring some of the official malefactors to account through prosecution and disbarment, after years of immunity. But the resultant reforms have too often been short-lived, and a familiar sequel has been the return of the guilty to public office through 'vindication' elections. Despite the fact that in most prosecutors' offices there will be found a few public-spirited men who place devotion to duty above neglect and corruption, the picture sketched by the recent surveys is one to make Justice hide her head in shame."³

That the disclosures of repeated investigations concerning the alliance of prosecutors with politicians and professional racketeers have a real basis in fact is evidenced by the necessity to appoint special investigators and special prosecutors when deep-seated rackets are being investigated. This merely means, in plain language, that the regularly elected prosecuting attorney is not trusted to make a proper investigation. American experience has shown only too often that this unholy alliance outlives the short-lived reforms that are instituted here and there at various times.

The extent to which the prosecuting attorney uses his wide powers of discretion is indicated by the fact that in 1934, of 42,563 defendants not convicted in twenty-five states, 22,801 or 53.6% of them were dismissed by the prosecution. In seventeen of the twenty-five states, more than 60% of the eliminations without conviction were brought about through dismissals by the prosecution.⁴ It is to be noted that in many of these cases either the committing magistrate or the grand jury, or both, had found a "prima facie" case against the defendant. Nevertheless, for whatever reasons the prosecutor may have had, he quashed the proceedings by refusing to prosecute. In Detroit, in the statistical years 1927-28 almost a third

³ Glueck, *op cit*, p. 149

⁴ Nathaniel F. Cantor, *Crime and Society* (Henry Holt and Co., New York, 1939), p. 83

of the felony cases were either nol-prossed or otherwise "dismissed" by the prosecutor, according to Glueck "Such wide variations in the rates of dismissals of cases by district attorneys make it probable that even where consent of court must first be obtained for the entry of a 'nolle prosequi,' there is something fundamentally wrong in the exercise of discretion by prosecutors." ⁵

Another common practice of prosecuting attorneys is that of "bargaining." This is equally indicative of the prosecutor's great power. Actually, in our urban centers where the pressure of cases is heavy, convictions in criminal cases are usually obtained on pleas of guilty. The prisoner "dickers for a light rap" in return for his plea of guilty. Petty larceny, a misdemeanor, has been called the common "cold" of the criminal law. It actually covers a great variety of serious felonies such as robbery, fraud, embezzlement, and grand larceny. The various crime surveys refer to the "startlingly large percentage" of cases in which the plea of guilty is to an offense of lesser gravity than the one originally charged against the defendant. Only too often the reduction is from a grave felony to a minor misdemeanor. "A citizen is held up at the point of a gun and robbery with a gun is to be punished severely in all jurisdictions. Imagine the surprise of the person robbed when he learns that his assailant serves a few months in jail or pays a fine for assault!" ⁶

It is obvious that the defendant profits from such a bargain. The prosecutor, if the state's case is weak because of lack of preparation, absent witnesses or congestion of the docket, may be glad to avoid the uncertainty, expense and labor of a jury trial. The court, of course, has the power theoretically to refuse to permit such a bargain. Actually, courts rarely do so. The Capone case is an instance where the court did insist that a trial be held. The seriousness and the greatest objection to this wide-spread practice lie in the fact that dangerous criminals are thereby treated merely as minor offenders. The following typical instance, cited in the Illinois Crime Survey, clearly indicates the danger, from society's point of view. "The defendant . . . has held up at the point of a gun the driver of a truck load of silk valued at from \$27,000 to \$30,000. This crime therefore was robbery while armed, the penalty for which, at the time it was committed, was from ten years to life. Notwithstanding this fact a plea of guilty for petit larceny was accepted and the sentence imposed was one year, definite, and a fine of one dollar." ⁷

What lies back of these pleas is clearly indicated by the Illinois Crime Survey: "When the plea of guilty is found in records, it is almost certain to have in the background, particularly in Cook County, a session of bargaining with the state's attorney. If the prisoner is charged with a severe

⁵ Glueck, *op cit*, p. 146

⁶ Baker, *op cit*, p. 788

⁷ Illinois Crime Survey, Illinois Association for Criminal Justice (Chicago, 1929), p. 471.

crime, which for some reason or other he does not care to fight, he frequently makes overtures to the state's attorney to the effect that he will plead guilty to a lesser crime than the one charged. Thus, if the charge is murder, where the punishment is death or a flat penalty anywhere from fourteen years to any number of years or life, the effort often is made to have the crime reduced to manslaughter, where the penalty runs from one to fourteen years. . . . These approaches, particularly in Cook County, often are made through another person called a 'fixer' This sort of a person is an abomination and it is a serious indictment against our system of criminal administration that such a leech not only can exist but thrive. . . . We found many cases in which the plea accepted, and the punishment inflicted, seemed trivial in comparison to the magnitude of the crime committed." ⁸

The extent of the practice is indicated by such figures as these. For every 100 defendants charged with felonies in New York City in 1926, 81 were convicted of lesser offenses than the one with which the defendant was originally charged. In Chicago in the same year, 75 of every 100 felony charges were reduced to lesser charges. Similar conditions have been found to exist in many other cities and counties.⁹ Legitimate reasons of course exist for not pressing cases and accepting pleas of guilt to a lower offense than originally charged. Difficulty of proof, reasons of economy, the size of the case-load may force him not to initiate proceedings. It may be wise social policy sometimes to accept pleas of guilt. But, as Glueck urges, "this very fact indicates how the system puts into the hands of those prosecutors who have but a warped conception of social responsibility an armory of powerful weapons with which to defeat the legitimate ends of justice without leaving behind embarrassing foot prints in the sands of time. Various devices—the abolition of the *nolle prosequi*, the requirement that the prosecutor record his reasons for its exercise, the written consent of the judge—have been resorted to as safeguards against the arbitrary and corrupt exercise of the power of the district attorney. But each has its Achilles' heel so long as the mental and moral standards of many public prosecutors are not raised." ¹⁰

There are obviously countless varieties of prosecutors, good and bad, old and young, energetic and lazy, courageous and cowardly. Whichever kind he is, the fact remains that he is the key man of the whole system. Perhaps Americans are too prone to seek betterment by law-making instead of devoting more study to the personnel in the administration of law. Great room for improvement undoubtedly exists here. Certainly more care should be employed in filling the office of public prosecutor. The office should be recognized for what it is in reality, the most important position of local government.

⁸ Illinois Crime Survey, pp. 470-471.

⁹ Cantor, *op cit*, p. 84

¹⁰ Glueck, *op cit*, p. 147

Counsel for the Defense

The prosecutor is not alone in serving the administration of criminal justice poorly. In the large cities those who make a business of defending criminals in our courts also do their part in undermining an effective enforcement of the law. The practice of criminal law in our urban centers is admittedly for the most part carried on by the more disreputable members of the legal profession. Their reputation among fellow-lawyers is none too savory. It is well known that most lawyers shrink from criminal practice. They regard it as a shabby business and prefer to go into the more lucrative civil practice. "Except for a few conspicuous cases of unusual importance, practice in urban criminal courts is chiefly in the hands of a lower stratum of the profession and of politician-lawyers who keep out of court and specialize in 'arrangements' and in taking advantage of the opportunities afforded by the series of mitigating devices and the wide powers of the prosecutor's office, to keep their clients from trial."¹¹ Glueck reports that none of the best students at the Harvard Law School is even interested in criminal practice, a point of view which, he says, is generally shared by students in the better law schools. Incompetent and poorly trained lawyers by the thousands come to the bar every year into what is already a very overcrowded profession. In New York 94% of those who fail the bar examinations are admitted ultimately. The ensuing struggle for survival is severe, the standards of the profession are lowered and the practice of criminal law, which is for the most part entered by the poorly trained and less capable of the profession, loses caste. As Glueck says, this leaves the field largely to professional criminal lawyers, shysters and novices.

The success of the criminal lawyer depends not so much on his legal and forensic abilities as it does on his skill in getting off the guilty through wire-pulling and manipulation. Guilty defendants seek a lawyer not for his legal ability. Rather they want "the man who knows the 'boys' who can get things done for him."¹² With the advent of organized crime, criminal lawyers without scruples are retained on a yearly fee basis. "Every large professional gang has its trusted mouthpiece, the lawyer who can be depended upon to arrange things. He is on hand with the bail bond or the *habeas corpus* writ to 'spring' the members of the gang who have had the misfortune to be arrested. If the case can be fixed, the lawyer will find the ways and means to fix it. If, for some reason, it cannot be fixed, the lawyer can be depended upon to arrange for a perjured defense or for the bribery or intimidation of jurors and witnesses."¹³ This makes clear why the

¹¹ National Commission on Law Observance and Enforcement, *Report on Prosecution* (U. S. Government Printing Office, Washington, 1931), p. 27.

¹² Raymond Moley, *Our Criminal Courts* (Minton, Balch and Co., New York, 1930), pp. 63-64.

¹³ Frank Tannenbaum, *Crime and the Community* (Ginn and Company, Boston, 1938), p. 265.

methods of professional criminal lawyers succeed better than those which a learned lawyer of a different type might use. There are obviously many tricks to the trade which the shyster lawyer will use on behalf of his client.

Local bar associations have sporadically taken action concerning such abuses. During 1929-1934, there have been as many as ten to twelve disbarments per 1,000 of lawyer population, as well as reprimands and suspensions, in some states. Glueck is of the opinion, however, that the problem of the unethical practitioner is still an acute one. He believes that more rigorous selection of candidates for the bar, more intensive control of their activities and greater leadership on the part of the judiciary will be of some help, "at least to the extent that the moral climate of the times permits."¹⁴ The Wickersham Commission calls attention, likewise, to the heavy responsibility which rests upon the leaders of the law profession and upon bar associations to bring about and maintain adequate standards of admission, of competency, and of conduct. "Thoroughgoing improvement in the quality and conduct of the habitual practitioners in criminal courts will yield more far-reaching results than any legislative changes in the machinery of prosecutions and the procedure at trials."¹⁵

It is not professional criminals only, however, who need the services of a criminal lawyer. Many who are caught in the meshes of the criminal law for the first time, those charged with minor infractions of the law, many who are innocent of the charge against them, may find themselves in court. Many of these are poor, ignorant people who cannot afford defense counsel. Professional criminal lawyers are not interested in defendants without money. Most of the States in the union have by legislation authorized or even required the courts to assign counsel for the defense of the indigent and unrepresented prisoners. In the case of capital crimes, all the states so provide. Thirty-four states so provide for felonies, and twenty-eight for misdemeanors. Three systems obtain in the United States: (1) Assigned unpaid counsel, serving as a matter of public duty only, (2) assigned paid counsel, serving for compensation either provided by general law or fixed by the court; (3) a public defender, who is a public officer specially charged with the duty of preparing the defense of indigent persons and defending them in court. Except in indictments for murder, the first is the prevailing system. The second obtains in murder cases in thirty-two states but only in ten states as to all felonies. Public defenders are provided for by statute in six states. In addition, there is also a voluntary system of providing experienced counsel for poor prisoners in New York City and recently in some other cities.¹⁶

The attorneys assigned to cases are for the most part young, inexperienced attorneys, who are recent graduates of the law school who desire to obtain

¹⁴ Glueck, *op cit*, pp 151-152.

¹⁵ National Commission on Law Observance and Enforcement, *op cit.*, p. 30.

¹⁶ *Ibid*, pp 30-31

trial experience. The fee is so small that capable counsel is not attracted to such cases "As things go in the average city, the system of assigning counsel is not efficient and is not economical. . . . In cities in this country where judges are in politics it comes to be treated as patronage, with the natural bad results. There are notorious abuses in more than one locality, and as a result the system of public defenders has grown up and has strong advocates." ¹⁷

The failure of due protection of law under the system of assigned counsel is partly responsible, then, for the development of the public defender system. The system was first established in Los Angeles in 1913, adapted for the state of California in 1921, and has since been adopted by statute for large urban areas in Connecticut, Illinois, Minnesota, Nebraska, Tennessee, and Virginia. In California and Nebraska public defenders are elected whereas in Connecticut, Illinois, Minnesota, and Virginia they are appointed by the judges.

Bar associations in some states, which recognize the inefficiency of assigned counsels, prefer voluntary defenders paid by the bar association or some other body to public defenders by the state. It is argued that, since the defender and the prosecutor are likely to belong to the same political party, both will be under political control. It is true that most cases are settled in conference between the prosecutor and the defense lawyer so that this may be an important consideration. The Wickersham Commission concluded that there is little reason to suppose that these officials will be above the average of office holders. "An elected public defender could easily be in politics. He could seek publicity at the expense of efficiency in sensational cases and fall into a perfunctory routine in other cases. . . . In other words, his office could easily show the same phenomena as those which have developed in the prosecutor's office" ¹⁸ The Commission felt that the arguments for the public defender system commonly presuppose an ideal public defender and accordingly were not prepared to recommend it generally.

It can be said, however, that the public defender system, on the whole, has generally proved to be more effective than the system of assigned counsel. Fewer delays, better preparation of cases and less expense to the state than under the assigned counsel system have been observed. Technical motions under the public defender are seldom made. Certainly, public defenders are far superior to assigned counsels with regard to efficiency of protection to the accused.

Attorney Mayer C. Goldman of New York City, an ardent advocate of the public defender idea during his life time, claimed that it means the democracy of justice. He said it was based on two important principles. (1) That it is as much the function of the state to shield the innocent as

¹⁷ *Ibid.*, p. 31

¹⁸ *Ibid.*, p. 33

to convict the guilty, (2) That the "presumption of innocence" requires the state to defend as well as to prosecute accused persons. Thus only, he said, can the suspicion now lurking in the public mind that a discrimination exists between different classes of accused persons be dispelled and give life and vitality to the much neglected theory of "equality before the law."¹⁹

The Courts

No two states have exactly the same court set-up yet it can be said that their organization follows the same plan in general. The organization of the criminal courts is according to the following pattern (a) Justices of the peace, police magistrates, and other inferior courts, having the dual role of preliminary hearings in felony cases and final decisions, subject to appeal, in minor crimes. (b) County, district, or circuit courts—the trial courts—which render final verdicts, subject to appeal, in serious criminal cases. (c) Specialized branches of the above courts—traffic courts, morals courts, or domestic relations courts, dealing with specified types of offenses. (d) Appellate courts and supreme courts which take cases on appeal from the lower courts and also have original jurisdiction in certain fields.

The federal court system, having jurisdiction over federal crimes, is somewhat analogous. The United States Commissioner acts in the capacity of committing magistrate, holding felons for the federal grand jury indictment. The country is divided into federal districts and circuits, with corresponding federal District Courts and Circuit Courts of Appeal. Final appellate jurisdiction rests with the United States Supreme Court in Washington, D. C.

Structurally, the state courts are poorly organized. The various police courts, magistrates courts, justices of the peace, municipal courts, county courts, the juvenile, family and domestic relations courts, and the overlapping courts with appellate jurisdiction, very frequently act without regard to what is happening in other courts. Each of these courts acts as a separate unit, except in those few places where some organization has been developed. Yet organization in court work, a big business in itself, is a vital necessity. There are some trends toward such organization. Beginning in 1905 with the establishment of a unified municipal court in Chicago to replace the numerous justices of the peace and police courts, unification of the entire system of criminal courts of Detroit appeared in 1921, followed by a similar unification of the federal courts in 1922. Other cities have been following the example set by Chicago and Detroit. Another trend toward organization of court work appears in the development of state judicial councils. In 1933 there were nineteen states who had judicial councils. They are bringing about some changes in procedure and administration with the consequent result of better organization. Cantor claims

¹⁹ Mayer C. Goldman, *The Public Defender* (G. P. Putnam's Sons, New York, 1917), pp. 2-3.

that there is no clear evidence that structural changes in court organization have "improved" the system of justice. Such structural reforms have been undertaken by relatively few cities, in the first place. Then, too, he doubts that the chief trouble is really in court organization. He suggests that the major difficulty may concern personnel rather than structure.²⁰ Yet, it is evident that the existing decentralization scatters responsibility, making central responsibility difficult to achieve. When each court acts as a separate unit, how can policies or standards be defined or agreed on?

There has been the further suggestion made that all the work of criminal justice should be integrated. According to this plan, one director would be placed in charge and thus bring together the work of the police, the courts, the prisons, the probation and parole boards and other related agencies. At present, because of our theory that the judicial and executive branches should be separate, these are all district units and consequently are constantly working at cross purposes.²¹

Various other grave criticisms have been levelled at our courts. We have already noted how prosecuting attorneys have on one pretext or another dismissed indictments against politicians or their friends. Cases are known where judges and juries have been "fixed" so that guilty offenders go free. Then, too, there is the matter of needless delays due to the intricacy of our criminal procedure. Our court methods and forms are deeply rooted in the past. The result is that the worship of precedent and the prestige of the past succeed in preventing any attempts to make the procedure of the criminal courts more rational and effective. We have seen that the drawing up of the indictment is not only a waste of time but permits opportunity for the abuse of technicalities. Because the grand jury system delays trial and because it is highly questionable that its judgment is superior to that of a magistrate, there seems to be no valid reason these days why it should be retained. As explained previously, it would be easy to change this so that a case could come up for trial on the basis of an information.

Further criticism concerns the delays due to an antiquated criminal procedure. All such delays are against the interests of the state but are definitely in favor of the accused. Delays may be due to the grand jury, to the form of indictment, to delays in the selection of a jury, to introducing unnecessary character witnesses, or to arguments over points of law for the sole purpose of a possible appeal on the basis of error by the defense lawyers, and, finally, to frequent continuances based on traditional courtesy to attorneys. Certainly justice should be expedited. To this end, various suggestions have been made such as reforms in the indictment and in methods of selecting jurors, saving wasted time by allowing the use of a transcript of the reporter's shorthand notes, certified by the judge, instead

²⁰ Cantor, *op cit*, pp 90-91

²¹ Edwin H. Sutherland, *Principles of Criminology* (J. B. Lippincott Company, Philadelphia, 1939), p 279.

of having lawyers make up their bills of exceptions on appeal, giving the trial judge more freedom of action and expression during the trial, the abolition of the unanimous verdict of the jury in favor of a five-sixths verdict in criminal cases, thus preventing the possibility of "hanging" the jury, and finally, drastic reduction of the long-winded orations to the jury by opposing attorneys in favor of giving the judge the power not only to construe the law to the jury but also to explain to the jury the meaning of the evidence ²²

Another very serious criticism of our courts concerns the "sporting theory" of justice, according to which the trial is regarded as a matching of wits between lawyers, rather than an attempt to ascertain the facts and render justice. Should a criminal trial be looked upon merely as a game between two lawyers? At present a criminal trial will still attract large audiences to watch this contest between two attorneys, each striving to win the case, regardless of merit, by resorting to the use of every possible trick, surprise, technicality or precedent. It is this "sporting theory" of justice which has reduced the judge to the status of an umpire or referee, whereas his function should be to serve as an agent of the state in the ascertainment of the facts. The justices of the courts of appeal also become merely arbiters who decide upon the fairness with which the game was played according to the rules in the trial court. Since most suggestions for the reform of criminal procedure are for the purpose of strengthening the state in the trial, professional criminal lawyers oppose them and little progress has been made in this regard in the legislatures. The result of this situation was well summed up by Roscoe Pound in 1906 in his address before the American Bar Association. "The effect of our exaggerated contentious procedure is not only to irritate parties, witnesses and jurors, in particular cases, but to give to the whole community a false notion of the purpose and end of law. Hence, comes, in large measure, the modern American race to beat the law. If the law is a mere game, neither the players who take part in it nor the public who witness it can be expected to yield to its spirit when their interests are served by evading it. Thus the courts instituted to administer justice according to law are made agents and abettors of lawlessnesses." ²³

The Trial Judge

The judge in criminal sessions has a dual function. He conducts the trial according to the procedural and evidentiary rules and he also imposes sentence. It is generally agreed that the judge is usually well qualified to perform his first function. In view of his training it seems desirable that he

²² John L. Gillin, *Criminology and Penology* (D. Appleton-Century Company, Inc., New York, 1935), pp. 551-554.

²³ Proceedings, American Bar Association, 1906, Part I, p. 395 ff., quoted by John D. Lawson, *Journal of Criminal Law and Criminology*, 1:80-81 (May, 1910).

should more completely control the trial than he does at present. His legal powers have been very narrow. The judge in the continental system, on the other hand, actually directs the trial. A change in this direction here in America is being urged by many.

It is doubtful, however, if the judge is able satisfactorily to perform his other function of imposing sentence. Evidence during trial merely establishes the fact of guilt or innocence. This is not a sufficient basis on which to determine the very important question of what should be done with the person who has been found to be guilty. Whereas the judge should know the character and personality make-up of the offender in fixing penalties, actually he can only guess at the person's character on the basis of his appearance and incidental information produced in the trial. The best judge will find it difficult to determine treatment on such a meager basis. The result is evidenced by the wide variety of policies which judges show in this respect. Some judges are known for their severity; others for their leniency. Criminals accordingly endeavor to secure a change of venue in order to come before the latter type of judge. It is known that some judges vary from day to day, depending on their moods. An interesting study of this phenomenon of individual differences in the sentencing tendencies of judges has recently been made of six judges in New Jersey, based upon an analysis of seven thousand cases.²⁴ The results disclosed are illuminating:

PERCENTAGE OF EACH KIND OF SENTENCE GIVEN BY EACH JUDGE

	Judge 1	Judge 2	Judge 3	Judge 4	Judge 5	Judge 6
Imprisonment	35.6%	33.6%	53.3%	57.7%	45.0%	50.0%
Probation	28.5	30.4	20.2	19.5	28.1	32.4
Fined	2.5	2.2	1.6	3.1	1.9	1.9
Suspended	33.4	33.8	24.3	19.7	25.0	15.7
No. of Cases	1235	1693	1869	1489	480	676

These judges rotated among the courts and dealt with the same types of cases. It will be noticed that one judge sentenced 57.7% of the convicted persons to imprisonment whereas another did so in only 33.6% of his cases. One judge placed 19.5% on probation, another, 32.4%.

Such variations according to individual moods and individual tendencies will persist unless objective standards and objective information are made available. It seems clear that if judges are to retain their present sentencing power, the assistance of probation officers with their field investigations or the recommendations of psychiatrists concerning personality make-up and other pertinent data should be given to judges.

There is a growing movement, however, to substitute a disposition tribunal for the judge with regard to the sentencing function. The training

²⁴ F. J. Gaudet, G. S. Harris, and C. W. St. John, "Individual Differences in the Sentencing Tendencies of Judges," *Journal of Criminal Law and Criminology*, 23:816 (January, 1933).

and experience of the judge, it is urged, are in the direction of analyzing legal elements, in sifting relevant evidence, in ruling upon questions of law, in charging the jury as to the law. The average lawyer-judge simply is not prepared and should not be expected to know how to individualize treatment. In those jurisdictions where the criminal codes grant the courts wide discretion in the sentencing power, it is exercised haphazardly. Therefore, the determination of guilt should be left to the courts but the determination of the sentence should be placed in the hands of "behavior experts" who would compose the disposition tribunal. The personnel of such a tribunal would include lawyers and non-lawyers. Together with a judge, the members should represent the fields of psychology, psychiatry, social work and criminology. As Cantor says, "Behavior experts are not magicians. They can't turn gun men into choir-sopranos. But they *are* more qualified than the average lay judge in evaluating and interpreting the play of physiological, psychological, and sociological factors in the lives of men. Physicians, social workers, psychologists, psychiatrists are trained in definite techniques. They obtain clinical experience through their major activity, over a period of time, they acquire insights into the complexities of character formation and personality growth."²⁵

The task of the tribunal would be to "diagnose" the entire situation, examine the offender's personality, his entire background, his dangerousness to the social interests, his possibilities of reform and to determine the method of treatment. Periodic reports on the offender's progress would be made and reexaminations made. The need for cooperation with the probation, parole and prison administration is clear. The tribunal would thus be represented in every treatment agency. Danger of abuse where such wide discretion exists would be obviated by carefully drawing the statute, conferring jurisdiction to the tribunal, as to delimit its power. Thus the tribunal would be broad enough to grant discretion without at the same time placing the offender completely at the mercy of humans who are liable to error. Provision for an appellate tribunal would also reassure the public that the liberties of men are being protected by law rather than by men. The judgment of such a disposition tribunal might not be more than a wise guess, but certainly, as Cantor claims, "a guess more soundly informed than the irresponsible 'conclusions' of the courts, the uninformed opinions of district attorneys, and the senseless punishment provisions of the criminal codes."²⁶

The trial judge may have obvious failings but he nevertheless may be considered one of the most hopeful factors in the machinery of criminal justice. In contrast to prosecutors and criminal lawyers, he has not lost public confidence. Corruption has besmirched him far less than other court officers. The scorn that is heaped on those judges who have been caught in

²⁵ Nathaniel Cantor, "A Disposition Tribunal," *Journal of Criminal Law and Criminology*, 29 55-56 (May, 1938).

²⁶ *Ibid.*, p 58

corrupt practices is evidence that such conduct is not to be condoned on the part of a judge even though it is more or less to be expected on the part of other public servants.

At present thirty-seven states elect their judges and another elects all judges except supreme court members. In Maine, Massachusetts, Delaware, New Hampshire and New Jersey, the judges are appointed by the governor. In Connecticut, Rhode Island, South Carolina, Utah and Virginia, they are chosen by the legislature. Florida elects all judges other than judges of the supreme court, which are appointed.

The election of judges is increasingly regarded as being unsatisfactory. In a modern urban community voters cannot be expected to know about the qualifications of judicial candidates. It gives the political machine, together with the criminal elements who have a vital interest in the courts, a chance to pick candidates they want. The Seabury investigation in New York City in 1932 revealed a notorious case of such a selection of judges by the political machine. Another aspect of the elective system that is to be deprecated is the disgusting self-advertisement that many judges indulge in to get the attention of voters—appearing at any and every event that will give them publicity, such as funerals, weddings, prize fights, lodge entertainments and the like, or by deliberate sensational behavior on the bench. All this is harmful to the judicial office.

An appointed judiciary, however, may not necessarily be better than an elected judiciary. It all depends upon their mode of choice. If the governor or mayor merely appoints the political boss' nominee, nothing is gained. It would seem that an alert bar association or an active non-partisan civic league might do much to assure proper candidates for the judicial office. Under an appointive set-up they could draw up the list of nominees from which the governor or mayor would choose the appointee. Others maintain that the method of appointment is not as important as facility for removal from office. The American Bar Association in 1933 suggested that a Judicial Council, composed of a supreme court judge, a circuit court judge, a probate-court judge, the attorney general, three practicing lawyers, and a state university faculty member, be empowered to decide the question of removal for unfitness. Legislative impeachment is considered to be too cumbersome a method of procedure.

The Jury

Trial by jury is guaranteed by the state constitutions, as it is in the Federal Constitution. According to the Sixth Amendment to the Constitution, "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury." Summary trial without a jury for petty offenses is of course not excluded thereby.

The striking thing to note about jury trial in criminal cases is that the right is extensively guaranteed but in actuality the jury is falling more or

less into disuse in criminal proceedings. The facts are that the trial plays but a very small part in criminal justice and the jury but a very small part in the trial. For instance, in thirty states in 1936, 77% of those convicted in trial courts were convicted on pleas of guilty, 17% on the finding of a jury, and 6% on the finding of a court. In New York City only 47% of all felony prosecutions ever reach jury trial. Many states by legislative provision permit waiver of jury trial and substitute trial by judge. Experience shows that relatively few cases go to trial by jury in these states. In Maryland, for example, of 4,644 persons guilty of felonies in 1930, 2,735 plead guilty, 1,677 were found guilty in trials before judges, and only 232 were so found in jury trials.²⁷ The problem of the jury, then, is ostensibly not so important as has been previously supposed.

This trend does not negate the fact that the jury trial is still of considerable importance in the criminal process, even though its use is not as extensive as is usually supposed. Many guilty persons refuse to plead and take their chance with a jury. Cases which have gotten considerable public attention are brought to jury trial by prosecutors who like the publicity involved. Importance attaches to the jury trial, aside from other considerations, because it is thus that the general public obtains its ideas concerning the operations of the machinery of justice. The dramatic value of a jury trial upon which public attention is focused, serves constantly to remind it that the jury originated as a protection against the despotism of kings and that it is the "palladium of our liberties." Plenty of criticism is urged against the retention of the jury. Much of this criticism is certainly pertinent. Nevertheless, as Cantor points out, "the general political and economic situation in the world today should caution us against surrendering trial by jury. We, in the United States, experience isolated cases of red-hunting and witch-burning prosecutions. But political prosecutions are almost normal practice in the totalitarian countries. If for no other reason, trial by jury should be retained as a form of insurance against the irrational political prosecution of minorities."²⁸

Cantor believes that a compromise solution is possible—retain the jury system but permit the defendant at his option to waive jury trial in favor of being heard by the judge alone. Students of the problem for the most part seem to favor this view. It is clear that both the state and the defendant gain advantages through the waiver of jury trial. The advantages to the prosecution include saving of expense to the state, celerity of trial, reduction in the number of appeals and reversals. As for the defendant, particularly when prejudice may enter the case because of the nature of the crime or because of his race, color or religion, he need not expose himself to jury prejudices. The newspapers get no chance to "try his case."

In so far as the jury is retained, criticisms of it should be noted, and, if

²⁷ Sutherland, *op cit*, p. 289.

²⁸ Cantor, *Crime and Society*, p. 98.

possible, corrected. In the first place, there is excessive delay in selecting American juries. Ninety-one days elapsed in the selection of a jury in the famous Calhoun case in San Francisco. In a Chicago trial 4,821 jurors were examined before a panel of twelve men was finally secured. In striking contrast to this we have the example of English and Canadian efficiency in securing juries. Justice Riddell of the Ontario Supreme Court claims that in his thirty years of judicial experience he has never seen it take more than a half hour to select a jury, even in a murder case. In that exceptional case it took forty-eight minutes!

A second criticism of the jury system concerns the competency of jury members. It seems that we do everything possible to weed out from jury service the very ones who by intelligence and training might be expected to make excellent jurors. Clergymen, teachers, physicians, and lawyers are exempt from jury service as are business men who claim they cannot absent themselves from their business; likewise, editors, engineers and similar groups. Then, too, those who do not wish to serve, secure their end by claiming to have an opinion on the case. The end product of this selective process is that those remaining are likely to be the least fortunate as well as the least competent citizens who finally compose our juries.

A third criticism is directed against the extraneous factors which influence jury decisions. After weary hours of haggling and arguing, jurors get mentally fatigued. All are anxious to get home. Under such circumstances a determined minority can influence a tired majority to change its votes in order thus to secure freedom. Jury deliberations are known frequently to ignore all the instructions of the judge and all the testimony presented, and come to a decision according to their prejudices. Harry E. Barnes cites the instance of a notorious murder trial in New Jersey where the jury frankly disregarded all the testimony, knelt in prayer, and then found a unanimous verdict for the defendant!²⁹ The case was only unique with regard to the frankness of the jury's confession of the method it pursued. It happens, too, that on an otherwise reasonably alert jury there may be an arbitrary-minded, powerful personality or an unusually stubborn moron who holds out against the judgment of the rest. Innumerable miscarriages of justice arise out of such situations.³⁰

Sutherland suggests that in so far as the jury is retained, it should be improved by giving to the judge increased control of the selection of the jury, by making provision for less than unanimous decisions, and by reduction in the size of the jury.³¹

²⁹ Harry E. Barnes, *The Repression of Crime* (George H. Doran Co., New York, 1926), p. 315.

³⁰ See Albert Morris, *Criminology* (Longmans, Green & Co., New York, 1934), pp. 283-286

³¹ Sutherland, *op cit*, p. 290.

The Juvenile Court

In broad outline it can be said that the traditional administration of criminal procedure is characterized by inflexible legal rules, by a retributive and deterrent philosophy and by an attitude of hostility toward the offender. In contrast to this, modern juvenile court procedure of dealing with youthful offenders is more in line with a developing scientific criminal procedure, with more adherence to the findings of modern social science than to antiquated sentiments of vengeance.

The first juvenile courts in the United States were established in Chicago and Denver under laws passed in 1899 in Illinois and Colorado. Today all states in the union have such laws providing special court organization to deal with juvenile cases with the exception of Maine and Wyoming. The development of the juvenile court represents the outstanding improvement that has been made in the past generation in the administration of criminal justice.

Two significant points characterized this new court: (1) The age below which a child could not be a criminal was raised from seven to sixteen years; (2) The work of the court was placed under equity or chancery jurisdiction. Dependent children for centuries had been under chancery jurisdiction as wards of the state. Now this principle of guardianship was extended to all children needing the protection and guardianship of the state, including delinquent children.

The law dealing with children must indicate the age limit under which the court has jurisdiction. The tendency in the United States has been to raise the age to eighteen, and even to twenty-one years. Adults who commit crimes against children or contribute to the delinquency or dependency of children come within the scope of juvenile court jurisdiction. In general, it may be said that "a juvenile court is a court having special jurisdiction of a parental nature over delinquent and neglected children. It is not—as it is often thought of in its popular conception—a sort of simple tribunal dealing with minor and petty offences committed by the youth of the community. It is rather a court of chancery and parental power to protect the erring and unfortunate child, . . . holding separate hearings for children's cases, and having the power to put children on probation. These are the most essential features of the juvenile court. Other features, important but not so essential to the organization of a juvenile court, are separate detention, special recording system, separate courtroom, and provisions for mental and physical examinations."³² Since the delinquent child is not considered as a criminal but a child who needs protection, the judge's problem therefore is not fundamentally concerned with the fact, nature, and degree of a specific offense; but on the contrary, in the oft-quoted words

³² Herbert H. Lou, *Juvenile Courts in the United States* (The University of North Carolina Press, Chapel Hill, 1927), pp. 32-33.

of Judge Julian W. Mack, is to determine "What is he, how has he become what he is, and what would best be done in his interest, and in the interest of the state, to save him from a downward career " ³³

The treatment, thus, that is accorded the offender is not in the spirit of revenge against one who has maliciously injured society and with whom society must get even. Instead, the juvenile court stands for guidance, rehabilitation, flexibility and protection rather than rigidity and punishment.³⁴ There are four possibilities of administering treatment dismissal, probation, home placement, as in a foster-family home, or commitment to an institution. Orders for dismissal and probation may be accompanied by orders for restitution or reparation. Fines may be imposed. But it is probation especially that makes available "the human side of reconstructing behavior in youth." A child on probation can remain in his home and be helped to integrate normal habits of life. Stigma that attaches to commitment to an institution is thus avoided. In cases where the child cannot be cared for by parents or is a homeless ward, the court may place the child in a foster home, a free home, a boarding home or a family home. As a last resort, the court may have to institutionalize the child. This remedy, however, is seldom applied without preliminary probation whereby the child is cared for in his own community.

It is true that very few juvenile courts embody the best features that may be found among all of them. Cantor claims that 80% of the courts throughout the country fail to meet the minimum standards of the United States Children's Bureau, i.e., (a) separate hearings for children; (b) official probation service and (c) recording of social data.³⁵ But it is true that the fundamental ideas of juvenile court procedure are winning out and are being adopted. It has turned its back on the contentious procedure of the criminal courts, instead the court acts as an administrative agency. It does not limit its inquiry to the proof of innocence or guilt but proceeds to seek the *cause* of the delinquency. To do this it utilizes psychiatric, medical and social diagnoses so that *rational treatment* may be given.

The question naturally arises, why should not the methods now used in juvenile courts be extended to the present procedure in adult criminal courts? If this were to happen, the present distinction between the juvenile court and the other courts would practically disappear. Judge Ben Lindsey urged the use of juvenile court methods in criminal courts. John H. Wigmore, Dean of the Northwestern University Law School, evidences the same attitude, as follows: "We have long believed that the juvenile court methods are destined to become, by expansion, the methods of the future in

³³ J. W. Mack, "Legal Problems Involved in the Establishment of the Juvenile Court," in *The Delinquent Child and Home*, by S. P. Breckinridge and E. Abbott (The Russell Sage Foundation, New York, 1912), p. 198.

³⁴ Clayton J. Ettinger, *The Problem of Crime* (Ray Long and Richard Smith, Inc., New York, 1932), p. 312.

³⁵ Cantor, *op. cit.*, p. 105.

dealing with certain classes of adult delinquencies ”³⁶ Can it be that the juvenile court movement, in breaking away from the old criminal procedure, is perhaps showing the way to a new procedure, not only for those who are under 21, 18 or 16 years of age, as the case may be in different states, and hence still “children” legally, but also for adults as well?

³⁶ J H Wigmore, “Obstructing the Efficiency of the Juvenile Court,” *Journal of Criminal Law and Criminology*, 13 167 (August, 1922).

CHAPTER 55

THE SOCIAL CONTROL OF CRIME AND THE PENAL SYSTEM

The Evolution of Punishment and Prison Origins

In primitive society acts harmful to the social group were punished by the execution of the offender, by some form of corporal punishment or by exile and outlawry, depending on the nature of the act and prevailing custom in the group. Kinsmen avenged private crimes in various ways, generally by death or slavery. In time, as the elders of the group got control of punishment, there developed the principle of "lex talionis"—namely, "an eye for an eye and a tooth for a tooth" as a standard of vengeance. When finally the state assumed the function of dealing with criminals, it adopted these early forms of retaliatory corporal punishment as the usual methods of punishing offenders.

(1) *The Death Penalty*—The oldest and, most likely, the commonest method of eliminating an offender from the group has been the infliction of the death penalty. There has been a variety of forms during historic times for inflicting the death penalty. Flaying and impaling, widely practised in the ancient Orient, were also used in mediaeval Europe. This meant skinning the victim alive and then placing him on a sharp stake exposed to the hot sun and the attack of insects and birds, until death at length intervened. In oriental and classical times death was secured by sewing the victim in a sack with a poisonous serpent. Stoning to death was popular in those times too. In olden times precipitation from a height was widely used. Poisoning, drowning, burning, crucifixion, strangulation, sawing asunder, suffocation, throwing to the wild beasts, burying alive, boiling, shooting, pressing, melted lead, beheading, blowing from the mouth of a cannon are some of the other methods. During the Middle Ages, as well as in ancient times, drawing and quartering was very popular. Four horses would be hitched to the victim's limbs and driven in opposite directions, thus pulling him in pieces. Barnes cites the case of an attempted assassin of Louis XV who was so tough that the horses failed to tear him apart after an hour's pulling so that he had to be quartered with a knife to assist them. The character of the times is reflected in the fact that observers pitied the struggling horses a great deal but showed no pity for the writhing victim. Boiling a person to death was legal in France until the French Revolution and was used in Tudor England. Public boilings of convicts are frequently mentioned in

mediaeval history. Of the various earlier forms of the death penalty, only hanging and beheading are still in wide use today ¹

At the present time capital punishment is inflicted by hanging, beheading, shooting, electrocution and the use of lethal gas. Forty-two states still retain capital punishment. Maine, Michigan, Minnesota, North Dakota, Rhode Island and Wisconsin have abolished it. In thirty-five states, however, it is permitted to substitute life imprisonment for execution. Only a little over 10% of the approximately 12,000 persons convicted annually for homicides are executed.

The historical movement has been in the direction of decreasing use of the death penalty. During the first half of the sixteenth century in the reign of Henry VIII in England more than 70,000 persons were executed. In 1820 there were still 200 capital offenses in England. The death penalty was inflicted at this time for what we today would consider very trivial offenses. In 1814, for instance, three boys of eight, nine and eleven years of age were given death sentences for stealing a pair of shoes. As late as 1814 Romilly was still trying in vain to substitute hanging in the case of treason in place of the existing penalty of hanging, then cutting down the person while still alive, disemboweling him, cutting off his head, and finally quartering the body. England finally abolished the death penalty for most offenses on the grounds that it did not deter others. By 1840 only fourteen crimes were punishable by hanging and by 1860 there were only four capital crimes in England. In colonial America hanging was the punishment for a dozen to a score of crimes. Credit belongs to the Pennsylvania and West Jersey Quakers for reducing the number to only two, treason and murder.

Opponents of the death penalty today are often charged with being sentimentalists. The fact, however, is that many of those in the best position to judge the pros and cons of the matter are opposed to it, notably the late Robert G. Elliott, official executioner, and Warden Lawes of Sing Sing. The death penalty is an irrevocable penalty and mistakes as to guilt are known to have happened. It is not reformatory for death obviously prevents reformation. To the extent that it is retributive in nature, it is based upon a discredited motive of punishment. Finally, the claim that capital punishment is not deterrent in effect gets support from the fact that homicidal rates have not appreciably advanced in those states where it has been abolished nor have murders decreased in the forty-two states that still retain the death penalty. It could well be argued that life imprisonment would be a more effective deterrent than the death penalty. Life imprisonment must, however, mean exactly that—a life-time spent behind bars. Pardons or lessening of the term should not be allowed unless subsequently innocence is proved.

¹ See Harry E. Barnes, *The Story of Punishment* (The Stratford Co., Boston, 1930), Chap. 9

Barnes has a telling argument in reply to those who insist that the death penalty is the only way to prevent others from taking life. He suggests that deterrence requires horror and publicity. A relatively painless private execution of which one may have never heard cannot be expected to deter as would a public spectacle carried out in a brutal and degrading manner. "We would no longer electrocute the murderers of the New York district in the isolation and relative privacy of the death chamber at Sing Sing. Rather we would boil them in oil or burn them at the stake in the Polo Grounds or the Yankee stadium and make attendance by successive groups of citizens compulsory."²

But capital punishment is no longer a public spectacle, inflicted on hundreds annually for a large number of offenses. It has now retreated behind closed doors, is inflicted on relatively few, and primarily for one crime only—murder. Most students of criminal science consider it to be a vanishing issue in penology.

(2) *Corporal Punishment*.—From earliest times to the close of the eighteenth century some form of corporal punishment was practically a universal way of punishing criminals. Corporal punishment means legally sanctioned methods of inflicting bodily pain as the penalty for breaking the law.

The following are some of the commonly used kinds of corporal punishment during the course of human history. Flogging was the most widely employed form of this from primitive times down to our own day. The Mosaic code prescribed flogging as a punishment for crime. It has been used not only to punish public crimes but it has also been universally used to preserve family, domestic, academic and military discipline. Whipping was widely used in the American Colonies particularly for wife-beating and for violating the blue laws. About 1800 flogging fell into relative disuse but it is still used. Flogging is legal in Delaware, Canada, Great Britain and certain Continental and Asiatic lands to punish certain crimes, primarily assault, robbery and rape. The methods of flogging and the instruments used have been varied. They have been characterized by extreme fiendish cruelty. Just to mention the "cat-o'-nine-tails," the Russian "knout" or the oriental "bastinado" or the rubber hose suggest the brutality associated with this practice.

Mutilation was another type of corporal punishment that was widely used down to the time of the introduction of imprisonment. It has been associated early with the idea of "lex talionis"—the punishment to be an exact duplicate of the injury done to the victim. Thus, if one cut off the hand of another person, he would lose his own hand, etc. There was a preventive "motif" in this practice. The idea was to prevent the repetition of a particular crime. Thus, liars or perjurers would have their tongues torn out, thieves their hands cut off, rapists would be castrated and women

² Harry E. Barnes, *Battling the Crime Wave* (The Stratford Co., Boston, 1931), p. 202.

guilty of adultery had their noses cut off to make them unattractive. It was also done for deterrent purposes. Horrible things were perpetrated on criminals to make them serve as gruesome object lessons. This deterrent aspect of mutilation is well illustrated in the following decree of William the Conqueror: "We decree that no one shall be killed or hung for any misdeeds, but rather that his eyes be plucked out and his feet, hands and testicles cut off, so that whatever part of his body remains will be a living sign to all of his crime and iniquity." There were no anaesthetics to relieve the anguish and pain of those thus punished. Mutilation persisted even in England until the early sixteenth century.

Branding was the last form of mutilation to be done away with. As late as 1699 English criminals were branded on the face with letters corresponding generally to the nature of the crime committed—"M" for murderers, "T" for thieves, etc. Branding was quite common, too, in the American Colonies. A punishment, closely related to branding, was the piercing of the tongue with a hot iron, imposed especially for lying, perjury and blasphemy. Branding was not abolished in England until the last half of the eighteenth century.

The stocks and pillory were especially used during the seventeenth, eighteenth, and early nineteenth centuries. The culprit was publicly disgraced and humiliated. In addition, the simple confinement in the pillory was very frequently supplemented by the victim being made the legitimate target of passers-by for rotten eggs, stones and the like, with death sometimes the result. The pillory was not abolished in England until 1837. The ducking-stool was another form of corporal punishment for lesser crimes. In the American Colonies village scolds and gossips were commonly punished in this manner.

It remains to be said that the Quakers were the only considerable religious group in Europe who in early modern times were sufficiently repelled by the cruelties of corporal punishment to protest vigorously against them. They were a hopeless minority in Europe and could do little beyond protest against the current barbarities. But in America, they controlled two English colonies and could implement their protest by introducing for the first time a criminal code which did away with corporal punishment, except for murder. The effects of this Quaker protest against the savagery of corporal punishment in the gradual rise of imprisonment will be considered later.³

(3) *Outlawry*.—Outlawry was a frequent practice in savage society. Under the circumstances of resulting lack of food and protection, it practically amounted to a death sentence. Banishment, voluntary exile, and transportation are all forms of this mode of punishment. It has been extensively used in all societies in historic times.

Banishment was used in ancient Rome. During the Middle Ages out-

³ See Barnes, *The Story of Punishment*, Chap 3

lawry was the punishment imposed on those who refused to pay a composition for an offense or did not obey the command of their lord. In England in the thirteenth century ten felons were outlawed for every one hanged. Portugal transported criminals to its colonies in the early fifteenth century. Spain did likewise in the early sixteenth century. Russia has used Siberia for this purpose since 1823. Russia sent 850,000 convicts there in the nineteenth century. Since 1865, Italy has been transporting some of its criminals to the islands off its coast. France, sporadically from 1763, then regularly from 1851 to the present day, has used the method of transportation. The notorious penal colony in French Guiana was established in 1852. Countries with no colonial possessions had to banish their convicts instead of transporting them.

England began to use systematic transportation of convicts on a large scale in 1619. Despite the strenuous opposition of the colonies, England continued to transport convicts to the American Colonies until the American Revolution. At the time of the Revolution about two thousand per year were being transported there. Since England had no prison system, a difficult problem of what to do with her convict population arose after the war. After crowding in desperation all types of criminals, young and old, sick and well, into hulks moored on the rivers, Australia was hit on as a solution. Transportation to there began in 1787. About 160,000 convicts were transported to Australia until transportation was finally abolished in 1867. From all accounts, the conditions among these convicts in Australia were most deplorable—in fact, almost incredible. The moral conditions among them were indescribable. Homosexuality was particularly prevalent. Nothing was done to mitigate their sufferings. Barnes says that the chain gangs, the floggings and other brutalities almost defy description.⁴ The free settlers who came to Australia objected to the practice. The fact, too, that prisons had been built in England put an end to the repulsive practice of convict transportation.

(4) *Imprisonment*.—It may be in opposition to much popular opinion, but it is a fact that imprisonment as a common method of punishment for crime is not a matured or tried and proved formula of the ages. Quite to the contrary, it is a relatively recent experiment in human history for dealing with criminals.

Several factors had combined to bring about the decline of the death penalty, corporal punishment, and transportation as methods of punishment of criminals. There were serious doubts that these methods actually deterred others from a life of crime. The "natural rights" of the individual was part and parcel of the rise of democratic ideas. Thus, the American Constitution forbade "cruel and unusual" punishments. Then, too, better understanding of human behavior showed that corporal punishment was not necessary as a way to preserve discipline.

⁴ See *ibid.*, Chap. 4, for a graphic description of these conditions

How did it come about that today a felon faces imprisonment as the major penalty for his conviction of a criminal act? Imprisonment itself is not a modern practice by any means. But imprisonment as a *system* for dealing with criminals is an innovation which has developed only within the last 175 years. This distinction should be kept in mind.

The prison as an institution where men can be detained against their will dates from remote antiquity. In recorded history there are frequent references to prisons being used to confine political and religious offenders; the prison system, however, which we know today as a means whereby imprisonment itself is the punishment for most crimes, is of recent historic origin. It is not possible to give an exact date for the general beginning of imprisonment as the method of crime punishment. It can be said with some degree of accuracy that imprisonment was unusual at the start of the eighteenth century, except as regards debtors and political and religious offenders, whereas it had become the conventional method of punishing criminals in both America and Europe before the middle of the nineteenth century. The eighteenth century, then, was the period of transition from corporal punishment to imprisonment. There was a general movement in this direction during the entire period but was especially accelerated after 1775.⁵

Until 1775 existing jails or prisons in Europe and America were not used to punish criminals, they were only used to safekeep those accused of crime, awaiting trial, and to confine various sorts of heretics, political prisoners and debtors. Previous to this time convicted persons usually suffered some form of corporal punishment, deportation or death. Credit for the introduction of the idea of prison confinement as the usual way of punishing those guilty of crime belongs to William Penn and the Quakers of West Jersey. As we have seen, corporal punishment had been universally used in colonial America. In 1681 in the penal code which the Quakers drew up, a system of workhouses was provided. They believed this to be both more humane and would also encourage reflection and the desire to reform. Shortly thereafter William Penn introduced this system into Pennsylvania. No doubt the English workhouse, as used in poor relief, and the Dutch system of workhouses for vagrants and paupers, suggested this novel practise to Penn. In addition, Quaker aversion to the cruel and bloody types of corporal punishment then being generally used was a factor in endeavoring to find a more humane method of treatment of convicts. This Quaker system of imprisonment did not endure, either in colonial Jersey or Pennsylvania. The English government was opposed to such humane methods. It did serve, however, as a precedent to Quakers a century later when they were endeavoring to get rid of the then current barbarities in dealing with criminals.

⁵ Harry E. Barnes, *The Repression of Crime* (George H. Doran Co., New York, 1926), Chap. 3

Influences were at work in the latter part of the eighteenth century to pave the way for a system of imprisonment as the normal method of crime punishment. The moral revival led by Wesley and Whitefield, the humanitarian ideas of the French "philosophers" and the English and American Quakers and the work of men like Montesquieu, Beccaria, Romilly and Bentham in jurisprudence were decisive factors in promoting change. The study of European prison conditions by John Howard between 1773 and 1791 influenced contemporary public opinion as did the work of the Quaker humanitarian, Elizabeth Fry, among the wretched women prisoners in London twenty years after Howard's death. Some sporadic reforms in English jail administration in the following decade or two after 1775 began to anticipate our modern prison system. Not until the period 1815 to 1835, when the barbarous English criminal laws were finally repealed, thus making possible the substitution of imprisonment for corporal punishment or banishment as the legal method of punishment, was it possible to accomplish a true prison system in England. France during the period of the French Revolution also advanced in the direction of substituting imprisonment for corporal punishment. Despite these and other evidences of progress, notably reforms in the Papal prison in Rome and that of Ghent in Belgium, the Quaker program in Philadelphia following 1776 marked the vital innovation which served to establish eventually our modern prison system and its accompanying system of discipline and administration.⁶

In 1776 the Quakers formed the Philadelphia Society for Assisting Distressed Prisoners, re-named a few years later as the Philadelphia Society for Alleviating the Miseries of Public Prisons. Between 1786 and 1795 the Society successfully agitated to have the Pennsylvania legislature abolish its barbarous punishments for crime and to substitute imprisonment for corporal punishment for all crimes except murder. The earlier work and ideas of Penn and correspondence with John Howard and other European reformers influenced the Quakers in their work. The resulting change necessitated providing institutions in which to confine criminals. So in 1790, by a coincidence the year of the death of John Howard, the father of prison reform, the old Walnut Street Jail was converted into a prison. A new wing of thirty individual cells was added for the solitary confinement of "hardened and atrocious offenders." This was an innovation which introduced the first solitary cellular confinement in America. This marks the beginning of the prison system in this country.

Not only was there a growing conviction abroad that such separation of prisoners would obviate mutual contamination but the Quakers also held a firm belief that it would further reformatory influences by meditation and communion with God. The Quakers believed they were establishing not merely a prison, but a true penitentiary. Today these words are used interchangeably but the Quakers used them precisely.

⁶ Harry E. Barnes, *Society in Transition* (Prentice-Hall, Inc., New York, 1939), pp. 722 ff.

Nineteenth Century American Prisons

Overcrowding soon became a serious problem so that the Pennsylvania legislature authorized the construction of two penitentiaries, one at Pittsburgh (1826) and another at Philadelphia (1829). The system of Quaker discipline and administration was incorporated in both the Western (Pittsburgh) and Eastern (Philadelphia) penitentiaries. New York state followed the precedent established in Pennsylvania and likewise substituted imprisonment for corporal punishment. A new prison also was necessary there to house its convicted offenders, so in 1816 one was built at Auburn. Massachusetts and Connecticut also proceeded to build new prisons. It can be said, therefore, that by the first quarter of the nineteenth century, confinement in prisons or penitentiaries had become the major method of dealing with offenders. The prison *system* had become firmly established.

The Eastern Penitentiary at once became the world's most famous penal institution. Prison reformers from all over Europe came to see the new prison and the system of penal administration established there. The central idea of the so-called Pennsylvania system was that of solitary confinement or labor under conditions of absolute silence which would encourage reflection and hence, it was believed, repentance. The monotony of silence was only rarely broken by a visit of the warden or chaplain. The visitors from abroad recommended the adoption of the Pennsylvania system in their countries so that in one form or another almost all of the European countries and England did so. In America, however, the Pennsylvania system was not as popular as it was in Europe. It was temporarily adopted in New Jersey and Rhode Island but made little headway elsewhere. Even Pennsylvania finally abandoned it in 1869 in the Western Penitentiary and in 1913 in the Eastern Penitentiary. In the latter institution the system had actually ceased to exist a half century prior to its legal and formal abandonment.

The reason why the Pennsylvania system was relatively unpopular in America was the rise of the rival Auburn system of penal administration. This system was characterized by cellular isolation at night and daytime association in the workshop. The Auburn system won out in American penal administration. The controversy which raged between the supporters of each of the two systems was long and furious. It was urged that the Pennsylvania system of solitary confinement facilitated ease of control, prevented contamination of fellow prisoners, permitted more opportunity for meditation, and afforded anonymity on discharge from prison. The supporters of the Auburn system pointed out its superiority over its rival system with regard to the greater economy in building the Auburn type of prison, its greater suitability for assembled labor and mechanical methods of manufacture with resultant economy due to increased production, and

finally, the absence of the deleterious moral and physical effects of complete solitude. The advantages of the Auburn system, real or alleged, would not have accomplished its primacy without the vigorous proselyting efforts and indefatigable labors of Louis Dwight of the Boston Prison Discipline Society. As a result of his efforts the Auburn system of prison administration for a half century after 1830 was introduced nearly without exception into all new American prisons. Its popularity was not to be threatened until the introduction of the Elmira system about fifty years later.

Both of these systems had great prestige and were of undoubted historical significance in the evolution of penology. They were important, however, primarily because they brought into being the modern prison. Both represented but the first crude step in the direction of a more humane and scientific handling of law violators. Neither of them succeeded in creating the bases of effective reformatory treatment of offenders. Not until a series of progressive reforms culminated in the Elmira system does there appear the semblance of a successful penal program designed to reform offenders. What was definitely established, however, by the middle of the nineteenth century, both in Europe and America, was confinement behind prison bars as the generally accepted method of dealing with offenders.

A number of significant progressive penal innovations which impressed leading American prison reformers after the Civil War were responsible for the introduction of the Elmira Reformatory system into New York state. In 1875 when the New York State Elmira Reformatory opened its doors the idea of reformation at length was definitely substituted for the repressive prison system that preceded it. The basic ideas or principles of Elmira were not new. Elmira merely combined in one institution a number of progressive reformatory principles tried elsewhere. Captain Alexander Maconochie, who in 1840 was in charge of the English Norfolk Island convict colony in Australia, introduced the idea of shortening the sentence for good behavior. Convicts could earn certain grades by labor, study and general good behavior. The reward was commutation of sentence. Sir Walter Crofton who was in charge of the Irish convict prisons in 1853 took over Captain Maconochie's principle of commutation of sentence for good behavior. He united with this system the ideas of the indeterminate sentence and parole to produce the famous Irish system in the middle of the nineteenth century. The various reports of the American prison reformers urged the adoption of these new ideas. The result was the Elmira Reformatory, which is therefore really the product of these new nineteenth century penal ideas—the Australian invention of marks and grades, the Irish system of conditional liberation and the indeterminate sentence, fused into the reformatory idea. Zebulon R. Brockway, who was a firm believer in the Irish system, was its first superintendent. The Elmira system's three basic principles were: (1) that criminals can be reformed through individual

treatment, (2) that the individual must coöperate and (3) that the process of reform is educational ⁷

The Irish and Elmira systems marked a real advance over the Pennsylvania and Auburn systems. The period of incarceration now depended in the former systems upon the prisoner's progress toward reformation. Not retaliation or deterrence were stressed, but reformation. The spirit of the Elmira system thus stood in striking contrast to the repression of the older prison system. Unfortunately, in application the Elmira system actually accomplished little. Even this system possessed serious defects. First of all, it was but rarely introduced into prisons for adults where unmodified repressive programs persisted, it was applied only to a fraction of youthful offenders. Then, too, while the idea was to promote reformation, it did not provide proper psychological surroundings to encourage the process. Individualization of treatment was not then understood as it is today. It was not yet understood that criminals must be dealt with as individuals or as classes of individuals, composed of psychological types which are differentiated on a scientific basis.

The Elmira Reformatory, however, paved the way for a general acceptance of the reformative idea, which today is embodied in all the programs of our more progressive juvenile and adult penal institutions.

The original intention was to send to Elmira only male first offenders between the ages of sixteen and thirty. Other reformatories were supposed similarly to receive only first offenders. Since it was difficult to determine the fact of first offense under existing methods of criminal identification and recording, hardened offenders came to receive reformatory sentences. The result has been that today adult reformatories in the United States are not much unlike older prisons. Reformatory prisoners can hardly be distinguished from convicts in state prisons with regard to age or length of sentence. Disciplinary methods are practically alike in both types of institutions. Its system of discipline has become repressive. It can be said that, in effect, the modern reformatory, with the exception of a few progressive reformatories, has become essentially a prison. In brief, the high ideals of the founders of the reformatory system have failed to be realized.

Studies made since 1930, notably by Austin MacCormick, the Gluecks in Massachusetts, and the Lewisohn Commission in New York, which presented revealing commentaries on their work, have stimulated some of them to new life. They now realize that knowledge of the personality and capacities of each inmate is a necessary preliminary to any reformative treatment. Attention is being directed toward the need of adequate academic and vocational programs of education. The Elmira Reformatory, though not the only one that is going ahead with such programs, appears to be again in the forefront of the reformative movement. The women's

⁷ Nathaniel F. Cantor, *Crime and Society* (Henry Holt and Co., New York, 1939), p. 237.

reformatories as a group, in contrast to women's prisons, have maintained and gone ahead with the reformatory ideal rather more effectively than the men's reformatories. They have been characterized by a willingness to experiment in penal treatment which is sadly lacking in the men's reformatories.⁸

The Prison System of the United States Today

The penal institutions of the United States at present comprise a heterogeneous, uncoordinated group of approximately 125 state and federal prisons to house felons, and about 3,000 municipal and county jails, work-houses and chain gang camps for short term offenders. In addition, there are 25 state reformatories for young offenders and approximately 125 juvenile reformatories, federal, state, municipal or county. Each unit of government, federal, state, county, and municipal, administers its own institutions in autonomous fashion. The diversity that characterizes our huge country in so many respects is the reason why America has so many prison "systems."

At any given time there are about 150,000 persons imprisoned in all of these institutions. Nearly 400,000 persons are committed to them each year. Since some individuals are convicted more than once in a year, the number of individuals sentenced is less than 400,000. The average annual cost per inmate in the larger prisons is about \$350. The average time that all these prisoners actually serve is slightly over two years. The length of prison terms averages about three years, that of county institutions, six weeks; that of municipal jails, seventeen days.

Prison doors swing both ways. Prison inmates do come out. For every man entering a prison there is generally another coming out. It has been estimated that about 96 per cent of those sent to prison are eventually released. Approximately 60,000 inmates of reformatories and penitentiaries as well as 300,000 jail inmates are released every year.⁹

It is extremely important to know what the influence of incarceration in our modern penal institutions is upon inmates. All kinds of offenders go to prison. They vary from Richard Whitney, social light, college graduate and former president of the New York Stock Exchange, to the most vicious gunman or degenerate sex offender. What happens to them in prison? Are they better or worse for their experience in prison? Are they prepared "to go straight" or are they more dangerous and anti-social when they at length come out to face the problem of living in society? It is with such questions in mind that we must judge our present-day penal institutions.

It stands to reason that prison officials should know something about the

⁸ See Albert Morris, *Criminology* (Longmans, Green and Co., New York, 1934), pp. 373-378.

⁹ *Ibid.*, pp. 379-381.

human material with which they deal. It seems hardly possible to develop a treatment program if the characteristics of inmates are not taken into account. These prisoners are under the control of the state because they were handicapped, in some fashion or other, in adjusting themselves to the problem of living in our complex civilization according to the dictates of the law. The failure somehow or other of other social institutions to make them law-abiding now makes them a state responsibility in order to accomplish this purpose. Personality deviations of the inmates may defeat the efforts of penal institutions in this regard. Nevertheless, practically speaking, "a correctional program must be established in the hope that inmates will be fortified with the advantages generally shared by most people, viz., health, literacy, some kind of trade, a sense of social responsibility, and self-respect."¹⁰

What, then, are the characteristics of those we send to prison? In enumerating these it is to be remembered that the *traits of criminals* are not thereby necessarily being described. Criminals who go to prison may or may not be typical or a fair sample of those who commit crimes but who nevertheless remain undetected or unconvicted. These traits of prisoners, furthermore, may or may not be causative factors in their crimes.

Various prison clinics indicate a large proportion of inmates suffer from various kinds of mental abnormalities. A high percentage are of low mentality. They have had little formal education as is the case with a majority of their parents. They are largely members of underprivileged groups of the population. Their homes were overcrowded and poverty-stricken, located in deteriorated neighborhoods, and often were recipients of relief. During adolescence many of their homes were broken up as a result of death, divorce or separation of parents. In many instances, the parents themselves had been "unmoral" or criminalistic, and failures as parents to their children. Their associations during youth were deleterious and socially harmful, typically those of the street corner gang, cheap dance hall or pool room. Generally speaking, neither their homes nor their neighborhoods were such as to be favorable to normal social development. Before their incarceration, their work was unskilled and irregular. Repeated juvenile delinquencies generally led to repeated commitments in juvenile institutions, interim probationary treatment, commitments to reformatories and at length to the state's prison. An outstanding characteristic is their youth. Most of them are in the young-adult period of life. Their lack of a wholesome family and neighborhood environment is a striking fact. Specific researches into criminal careers supports this general picture of prison inmates as a group. Such is the human material that penal administrators must deal with.¹¹

To what kind of penal institutions are these social failures sent? Approxi-

¹⁰ Cantor, *op cit*, p. 133.

¹¹ *Ibid.*, pp. 133-135.

mately eighty of the hundred institutions in this country used for long-term confinement of prisoners are of the Auburn type. With the exception of women's reformatories, these Federal and State prisons and reformatories generally represent the same type of physical plant and are operated more or less on the same pattern. Many of these are very old penal structures. Some like Auburn in New York and Charlestown Prison in Massachusetts were built over a century ago. More than a third of all the prisons in the country still being used were built more than seventy years ago. Only nineteen prisons were built since 1900. The age of our prisons is significant in that it means the construction of these older prisons antedates modern sanitary conveniences, a proper appreciation of the importance of light and ventilation as well as modern ideas regarding segregation, classification, recreational and educational programs.¹²

Regardless of their date of construction, the buildings are of a definite type. They are monumental structures of steel, concrete, and granite—grim and forbidding fortresses which symbolize to the average citizen his protection against the enemies of society. Just how great this protection is fundamentally we shall see later. In these Bastille-like structures, convicts are filed away in hundreds of small, heavily barred cells which range in long rows, tier upon tier. These cell blocks are for the most part put inside of the prison building so that the front of the cells faces the corridor rather than the outside air. A minimum of light, air and ventilation is possible. Such cells are not only uncomfortable in hot weather but are also unhealthy habitations all of the time. Formerly the cells had no water system so that buckets had to be used which the inmates emptied every twenty-four hours. Now, at least in more recently constructed prisons, a wash stand and toilet bowl are to be found. In 1933, 21 per cent of the men's prisons still used the bucket system. Surrounding the prison plant and grounds there is always a high concrete wall with sentry towers, in which guards with machine guns or rifles are on the alert.

Serious conditions of overcrowding in our prisons are widely prevalent. Sentences have been increasing in length so that, in spite of increasing use of probation and parole, the number of persons being sent to prisons or reformatories has increased. The result is that two or three prisoners have to be placed in cells which originally were meant for one. An incredible situation of inadequate air space in our prisons is indicated by numerous investigations and reports. Because of overcrowding and lack of employment for inmates, a large proportion of the prisoners have to be kept locked up for a large part of the day. Instances of cell confinement for twenty out of twenty-four hours of the day are known.

Idleness due to insufficient work for prisoners thus makes these conditions of overcrowding still more serious. Unemployment added to small

¹² Frank Tannenbaum, *Crime and the Community* (Ginn and Company, Boston, 1938), p. 293

cells, insufficient ventilation and light, conditions of crowding, absence of toilet facilities in many institutions, produces a condition of strain on both the prison personnel and inmates that becomes well-nigh intolerable. Years of idleness under such conditions inevitably result in human deterioration. This condition of idleness is growing continually worse. James V Bennett, assistant director of the U. S. Prison Bureau, has presented the following graphic description of the situation. "Most American state prisons are now merely vast idle houses filled with a horde of despairing, discouraged, disgruntled men, milling aimlessly about an overcrowded prison yard. Take a peep at San Quentin if you don't believe it, where 5800 men are immured in an institution built for 2500, with eight hours of real work daily for only about one sixth of the population; or drop into the yard, if you've nerve enough, at Jackson, Mich, where less than 10 percent of the 6000 inmates have a job which is anything more than busy work. Look over the wall at the reformatory at Frankfort, Kentucky, where the only outlet for the energies of 3000 prisoners is a small shop employing less than 200 men, and then ask yourself if unemployment is worse on the Bowery than in The Big Stir—But it is far worse today when out of 160,000 men in the prisons of this country less than 20,000 have any kind of employment other than time-wasting and energy-consuming tasks connected with the maintenance of the institution in which they are incarcerated."¹³ It is claimed that eighty per cent of the prison population, the country over, is spending its time in corroding idleness To expect reformative influences to eventuate from such circumstances is to expect the impossible.

The problem of sanitation and health in our prisons is a serious one. The cells of the older prisons, built of brick, cement or stone, cannot be kept dry. Such buildings are damp and the walls often are moist. Rheumatism is a frequent complaint among inmates. It is very difficult to keep the cells clean so that they become breeding places for vermin. Conditions are generally insanitary and degrading. Such conditions prevalent in older prison structures coarsen and harden inmates and can hardly be expected to exert a reformative influence. The prison doctor, who should have a recognized position of authority, is generally treated as a subordinate. He is generally dependent on the warden for tenure. In the majority of cases, prisons have only part-time physicians and so-called full-time physicians also engage in outside private practice. The service he can render prisoners can only be inadequate in view of the very heavy demands made upon him in a prison of two to four thousand inmates. Prison hospital facilities too are often inadequate. "With insufficient beds, insufficient hospital space, with poor equipment and inadequate assistance in the form of inmate nurses, with the all too frequently untrained and officious guard who interferes in

¹³ James V Bennett, "American Prisons—Houses of Idleness," *The Survey*, 71.99 (April, 1935).

the legitimate activities of the prison physician, the hospital and medical care of the prison is not what the prison community requires for its best service to the inmates. These conditions are still worse in the prisons where the doctor is on part time."¹⁴

With regard to prison education, Austin H. MacCormick, then Assistant Director, U. S. Bureau of Prisons, after making a definitive study of the subject, said in 1931 that "not a single complete and well-rounded educational program adequately financed and staffed was encountered in all the prisons in the country."¹⁵ He re-inforces this general indictment with abundant specific evidence. Neither prisons nor reformatories in this country make a serious attempt to capitalize the large amount of unoccupied time on prisoner's hands for serious educational ends. No opportunity for schooling beyond the lower grades and little vocational education is offered. MacCormick describes the heights to which the typical educational program in prison rises as follows: "Picture a not unusual prison school. A few illiterates are learning to read a book that tells how Tommy and Susie went out to catch butterflies or that rhapsodizes on the subject of how soft and warm Pussy's coat is. A few strays who are attending school from a variety of motives are studying arithmetic or history or geography from ancient and dog-eared textbooks written for juveniles. A few foreigners are being 'Americanized' by being taught that United States Senators are elected every six years. A handful of men are studying 'vocational courses' in bookkeeping, business English and show-card writing. The teacher is a chaplain, an underpaid guard, a city school teacher who has already done a hard day's work in his own school, or an inmate who got the job because he has somewhat more education than his fellows but who has had no previous teaching experience and is now receiving no training in teaching technique. . . . The schoolroom is a dimly lighted, smelly mess hall, a chapel with a sloping floor and stationary seats into which the students are crammed without room for desks or tables, the lower corridor of a cell block, or a room in the basement. . . ."¹⁶ This may be a somewhat exaggerated picture but MacCormick insists that he can show the skeptic no less than fifty prisons and reformatories where the educational program rises very little, if at all, above the level described.

States vary as to their methods of administering prisons and appointing prison personnel. A voluntary board of managers or trustees may be in control of each of the several prisons in a state and shape the general policies of the prison. Each board may have to report to a state board of supervision which reports to the state legislature. In some states, such as Massachusetts, New Jersey and New York, all state penal institutions are controlled

¹⁴ Frank Tannenbaum, *op. cit.*, p. 302.

¹⁵ Austin H. MacCormick, *The Education of Adult Prisoners* (National Society for Penal Information, New York, 1931), p. 38.

¹⁶ *Ibid.*, pp. 40-41.

by a state department of correction or, as in Illinois, by a department of Public Welfare. Such departments have complete administrative authority over all policies. Federal penal institutions are administered by the Bureau of Prisons, Department of Justice.

Prison personnel in our country, wardens and guards, is generally not of high calibre. Administrative heads of prisons are for the most part selected on the basis of political patronage. Their average tenure is somewhat under two years. Tannenbaum cites the situation in some Western states where the term of the warden begins and ends on the same date as that of the governor, the appointment obviously being one of political choice. Under such circumstances it cannot be a matter of surprise that the background of training of most wardens is deficient with respect to modern standards of penal administration. The lack of an attractive salary is one reason why it is difficult to secure the kind of man that such a responsible job as a wardenship demands. The main trouble, however, lies in our failure to realize the real function of a prison. The prison is regarded too much as a place merely to repress and control dangerous men rather than as an institution where three or four thousand men are to be rehabilitated, if possible, by means of suitable programs. Higher types of wardens will become available only when this work of rebuilding men is recognized as a paramount objective. Such a professional complex problem will require administrative heads whose character, training, and qualities of leadership are equal to the demands of so difficult a task. A new type of institutional head for an American prison is sorely needed if any penal progress is to be made. The current failure of our prison system is in part certainly attributable to the lack of qualified administrative leadership, which, in turn, is related to our contemporary idea of the function of prisons. Incompetence and lack of continuity of policy, indifference to standards and lack of sympathy for a professional and scientific attitude toward penal administration are part of the price that is paid for the hail-fellow-well-met type of politician-warden we have at present.

The prison guard occupies a pivotal position in penal administration. The very best type of warden would be utterly unable to achieve a worthwhile penal objective if the group of officers under him were disloyal or incompetent. These guards are usually warden appointees. The pay is very low so that it is impossible to secure really competent men. They are untrained for their work, with very few exceptions in recent times. The turnover, as might be expected, is very great. In addition to the fact that they receive poor pay and have to work long hours, the nature of their duties in a tense situation is such as to tax severely their patience and mental equilibrium.

It is not difficult to understand why the guard becomes a perverse, cruel keeper. Tannenbaum draws a picture of harshness, silence, twilight, discipline which hold true for both keeper and prisoner alike. The guard too

is a prisoner. His only outlet or means of escape is to exercise the power he has. He becomes a harsh and brutal person before he knows it or realizes what is happening to him. "These two elements—the exercise of authority and the resulting enjoyment of brutality—are the keynote to an understanding of the psychology of the keeper. They are both the result of the prison organization, and both feed upon suppression. . . . In the outside world, authority is limited by the freedom of the subject. In the army, the soldier can always desert; in the factory, he can always quit his job. . . . But in prison there is no escape from authority. The authority of the keeper and the warden is absolute, and the weakness and helplessness of the prisoners are absolute. What this means is that the influence of authority tends to show itself more quickly and more conspicuously and more effectively in the prison than it does in any other organized community. . . . There is thus a passion developed for cruelty in prison on the part of the keeper, which is unmistakable, and for which testimony is to be found in almost every prison memoir and the report of almost every investigation of prison cruelty. Nothing can explain the ingenious tortures, the readiness and almost the pleasure with which they are inflicted, except a strong desire in terms of emotion (rather than reasonable conviction of their utility) for their imposition. Hanging people by their wrists, handcuffing them to their doors, making them wear head cages chained around the neck, beating them with clubs, and doing other brutal things cannot be explained in terms of discipline or its effectiveness."¹⁷ Tannenbaum's description of one instance of this particular type of cruelty in the "Cooler" of Blackwell's Island is memorable. It concerned a guard called "Chippie Chaser." He would deliberately provoke the inmates in their cells to a frenzy of rage until they howled and screeched, slammed their buckets against the doors, "raising a desperate, maddening sound, that must have been heard in heaven. And he, standing down there looking up at the galleries where the men were foaming at the mouth with exasperation, would rub his hands, open his toothless mouth, and shout above the din of the banging buckets against the iron doors, 'This is hell and I am the devil.' "¹⁸

All this would seem to suggest that isolation works in a vicious circle, resulting in greater isolation and more cruelty and more isolation and repression. When more sociability is permitted, as it is in recent penal programs of modern progressive penal institutions, there will be less need of cruelty and the vicious circle will be broken. To accomplish this it is clear, however, that a new type of prison personnel will be necessary. Guards, who conceive their function to be merely counting men, locking and unlocking prison doors, and guarding men to prevent escape, must yield to a professionalized type of prison personnel that possesses knowledge and

¹⁷ Frank Tannenbaum, *Wall Shadows* (G. P. Putnam's Sons, New York, 1922), pp. 29-33.

¹⁸ *Ibid.*, pp. 37-38.

insight into the difficult human problem of remaking or rehabilitating the inmates of our prisons.

To complete our picture of what kind of institution it is to which we send our prisoners, and what happens to them there, a brief description of prison routine follows. Certain general features typify and are common to most prisons. Day in and day out the prisoner lives a life of deadening routine. Prison routine is routine with a vengeance. To enable the reader better to understand what kind of a dull, debilitating existence the prisoner has, it will be well to let one articulate prisoner describe conventional prison routine:

I would lie there in bed, my face to the dark side of the cell, clinging tightly to old times and to future times, to anything which promised even a vicarious life. The contiguous, encircling reality was too harsh to be borne.

At last I would have to get up. Breakfast. Mush and milk. Beans. Whatever it happened to be. It was never any good. How could it be? It was merely fuel. . . .

The futility, the monotony, the drabness of it. Every day the same feelings, the same food, the same sense of stultification. The jaded prisoner would say to himself: "Jesus Christ! the same today, tomorrow, and forevermore?" . . . Will there always be drabness? Will there never be *life*? And how look for life in a tomb

Eight o'clock. The Bucket Brigade, the march of Feces and Urine . . . One walked to the brink of the walled-in cesspool, gagging and choking at the redoubled onslaught of stench, emptied the bucket, threw in a scoopful of disinfectant, hung the bucket on a nail, and marched back into the shop line. . . . One might stand there thinking about nothing in particular, drugged by the prevalent "prison stupor." . . . The basic feeling was one of waiting—waiting for the new day actually to begin; for the day of working, of looking for mail, of waiting for news about one's "case," for word about parole, pardon, what not.

In straggling, disorderly ranks we would march to the shops . . . whatever shop it might happen to be. Some of us might wonder about the values involved. What about trades? Who the hell wants to be a shoemaker when he gets out? Where can you find a job making automobile plates in the free world, when they're all made in prison? . . . Whether or not I complete my task for the day, Paddy each morning throws a fresh bundle of work on my bench. This means that I shall never be caught up, that I shall never have a moment of leisure. . . . I simply have not the mechanical skill to cope with the daily task. Paddy, therefore, wins. . . . He is brute stupidity rampant and successful. He is prison work. . . .

It is noontime. The hateful shop morning is ended. We march to our cells for the noon meal and an hour of rest. Rest! How rest the tired, rebellious, imprisoned mind? One cannot rest. One can merely escape from the existing drabness. One can merely lie down on the bed and drift off into the dream world; into the memories of the past, visions of the future; neither of which

is satisfactory except in retrospect or anticipation. One lies in a stupor, shutting out the undignified, unappetizing dullness, deliberately or unconsciously running away from life. This is a bad habit to get into, this flying from reality, but it is a habit into which practically all of us get, mildly or terribly, depending entirely on the length of our sentences, our ages, our intensities of awareness.

One o'clock. Back to work again. The same stuffy shops, the same tiresome work. It is absolute industrial masturbation! Merely working men in order to keep them busy, with no pride in the finished product, no care about inculcating habits of craftsmanship, no thought except to make us do something we don't like to do. The guards on their elevated benches become lazy-minded, unpremeditated sadists, and take a senseless delight in giving each man the job he most heartily hates to do. . . . Thus we spend eight hours each day—one third of our lives. . . . Day after day we find that prosyness, inertia, stolidity, weariness and dejection are the prevailing qualities of our lives. The escapes and murders—the exciting things—are so infrequent as to be practically non-existent. . . . Every minute of the day, all the year round, the most dominant tone is one of monotony.

Four o'clock. Yard time. Recreation. . . . We go from the stuffy shop to the colorless yard. In it is no blade of grass, no tree, no bit of freshness or brilliance. Gray walls, dusty gravel, dirt and asphalt hardness. We walk about, or during our first few months or years manage to throw a ball back and forth and in some degree exercise our bodies. The longer we stay here, the less we do. At last we merely walk at a funeral pace, or lean against a wall and talk.

We always talk. During the working hours, but even more so during the cell hours, we store up facts, reflections, broodings, so that our minds are overflowing. And every chance we get to unburden them, we avail ourselves of it. We talk *at* each other. We do not converse; we deliver monologues in which we get rid of the stored-up bubblings. We try to live through words and self-dramatization. Our essential need is for actual tangible living, which we cannot have, so we try to live by pretending to live in tall stories based on how we'd like to live, how we long to live. . . .

Four-thirty. Yard time is over. We march to our cells, taking with us the evening meal. The shop has been so enervating, so weakening, so downright devitalizing, that we are glad to go to our cells. We think, 'Well, here's another day done. Another day nearer home. God, but it's good to get back to the cell!' In our hearts, however, we know that the cell is even worse than the shop, and that in the morning we'll be saying, 'God but it's good to get out of that damned cell!'¹⁹

Such is the peculiar environment of the prison. Under a system of rigid rules, thousands of young men are kept confined against their will. Prison rules are eloquent testimony to the unnatural tenseness, suspicion, hatred

¹⁹ Victor F. Nelson, *Prison Days and Nights* (Little, Brown and Company, Boston, 1933), pp. 10-16.

and fear that pervade the institution. Prison rules can be enforced either by offering rewards for compliance in the nature of certain privileges, such as the right to earn "good time," to receive visits, write letters, smoke tobacco, see a movie, etc., or, such inducements being insufficient, to use other kinds of control and discipline. Some of the various disciplinary methods that are still in vogue are placing men in some form of isolation as the dark cell, the occasional use of the strait-jacket, the use of the strap, handcuffing men to the doors. These practices are generally concealed and denied by prison officials. Prisoners are intimidated and fear to disclose their experiences. Only when we have prison riots does the existence of these methods of discipline, of which the public has been unaware, come to light.²⁰

Nelson testifies to the sheer futility of the methods of punishment which had been tried on him. Every conceivable form of punishment had been used on him. As to their measure of success, he simply says, "I kept on doing the same things I had been doing." The opinions of numerous prisoners regarding their prison experience could be cited to show how futile prisons are in reforming men or changing their attitudes. They concur in showing that nothing in the official system benefited them, very little that could be construed as constructive or helpful to them to face life after they got out. Many in fact are definitely more hardened and anti-social than when they entered prison.

The conviction has been growing that "something is vitally wrong with our prison system. Criminals, after all, are human beings, and we are beginning to realize that nothing short of an unbearable affront to human nature could drive men to such desperate revolts. It may be, then, that the time is ripe to reconsider the fundamental objectives of our prison system."²¹ It is no doubt true that, once the criminal is put safely behind the bars, the public would rather forget about him. The unthinking public erroneously believes that the criminal is a person apart, that he has forfeited all claim to the consideration of decent people, that what happens to him in prison doesn't really matter, and, most fallacious of all, that society is being "protected" by placing him behind prison bars. The trouble with these comforting but false beliefs of the public is that sooner or later 90 or 95 percent of these convicts will return to society. Therefore, it is important to ask, "Just how great has been this protection?" Certainly, if these men go free merely to continue their former mode of life, society has not been protected in any fundamental way. A prison system which merely isolates criminals for a few years without reforming them fails utterly to achieve true social security. It follows, then, that society, in a very real sense, does have a large stake in the genuine welfare of its prisoners. Imprisonment in the typical old-line prison, however, has not been successful as a means of

²⁰ See Tannenbaum, *op cit*, Chap. 13.

²¹ Ralph P. Holben, "Science Goes to Prison," *Atlantic Monthly*, 148: 194 (August, 1931).

reformation In fact, there is nothing more certain about prisons than that the old methods, based solely upon punishment and social revenge, have proved futile Fortunately, there is tangible evidence today of a definite trend toward a new penology. It is actually in process of evolving from our present penal system, slowly in some respects, more rapidly in others. It bespeaks a more rational approach to the whole problem of crime and a more genuinely scientific attempt to reclaim a large part of the human wreckage which drifts each year through our courtrooms into our prisons. There is evident today a definite shift in penology away from punishment to the objectives of treatment and prevention.

Cantor makes the arresting statement that "the only striking difference between Auburn in 1826 and San Quentin in 1930 is one hundred and four years!"²² This, he says, is no accident. During all this time the Auburn system has been both the architectural and administrative model for the vast majority of American prisons. At long last American penology faces a new day. This new day in American penology will result in real progress only if science and not tradition is relied upon Science must go to prison!

²² Nathaniel F. Cantor, *Crime, Criminals and Criminal Justice* (Henry Holt and Co., New York, 1932), p. 286.

CHAPTER 56

FROM PUNISHMENT TO TREATMENT AND PREVENTION

Limitations and Evils of Punishment and Imprisonment

The main purpose of prisons has been to keep criminals confined. The prevention of escapes has preoccupied prison officials above everything else. Since relatively few prisoners succeed in effecting their escape, this function of prisons may be said to be performed efficiently. Society does receive some protection from crime from this policy. Justifications of this policy can be summed up in the words—incapacitation, deterrence and reformation. Prisoners can hardly commit crimes while incarcerated, potential offenders may be deterred from committing crimes by the example of prisoners behind bars, and some convicts may be reformed and turn over a new leaf after their prison experience.

The deterrent value of imprisonment is a moot question. Its success is probably less in this regard than it is in incapacitating criminals. As a means of reformation, the success of the prison system is slight indeed. It is true that society, from the very start of imprisonment, hoped incarceration would produce a change for the better in the personality of the convict. The mechanical treadmill kind of existence, typical of our conventional prison system, has utterly failed to produce this desired result. The facts of recidivism bear eloquent testimony to this failure. At least 60% of all of those received in our prisons and reformatories are "repeaters," that is, have served previous terms of imprisonment. In 1936 in Massachusetts about 65% of offenders admitted to all types of correctional institutions in the state were repeaters. The average number of previous commitments per recidivist was 5.6. Two per cent of them had more than 30 commitments each. The follow-up study of men released from the Massachusetts Reformatory, made by Sheldon and Eleanor Glueck, disclosed the important fact "that out of 510 men who left the Massachusetts Reformatory during the years 1911-22 *eighty per cent* were not reformed five to fifteen years later, but went right on committing crimes after their discharge."¹ It is clear that the outcome of the prison experience has been characterized by failure to accomplish the objective of reformation.

¹ Sheldon and Eleanor T. Glueck, *500 Criminal Careers* (Alfred A. Knopf, Inc., New York, 1930), p. vii.

Close students of the problem not only indict our present prison system for its failure to reform the human material in its charge, they condemn it for actually doing more harm than good. Barnes charges that "prisons as they have existed down to now have almost invariably made men worse upon discharge than they were when committed. Indeed, if one were to sit down with pencil and paper and deliberately devise the institution which would most surely degrade and demoralize the human personality he would unconsciously create our modern prisons. In short, if one desires to punish and destroy a man, our prisons are perfectly designed for that purpose. But if one wishes to reform a convict, the typical prison would be the last place to send him."² Mary Gordon, a former English prison official, regards the prison system as a gigantic irrelevance—a social curiosity. She failed to mark a good effect of the system on any prisoner. Of its cruelty or its power to demoralize she had no doubt. She did not think it belonged to this time or civilization at all. She concludes "It may appear that, so far, I have no good word to say for our prison system in any of its forms. I have not. I think it creates a criminal class, and directly fosters recidivism, that our method is dead and done with, and in need of decent cremation. From the ashes one hopes a system might arise which, if imbued with a really scientific spirit, might be a new beginning in tackling a problem which is, at present, all to solve."³

Those who urge changes in present methods of dealing with offenders are often faced with the jibe of being sentimentalists. The abolition of a system of vindictive punishment in no way suggests an alternative of sentimental coddling of prisoners. The real sentimentalists are those who refuse to give up present methods, despite the fact that they produce no favorable results, simply because they are traditional procedures. The realists actually are those who face these facts of failure and are willing to substitute new objectives and procedures, based upon current scientific knowledge, and experiment with new prison programs that do offer real possibilities of turning out men who are better than when they entered the institution. Only thus will real social protection be secured.

Treatment Versus Punishment

Both the development of modern knowledge and the actual results of punishment in action have undermined the philosophy of punishment. Modern psychology and sociology clearly show that a criminal's behavior is as natural for him in view of his background of heredity and social experiences as lawful behavior is for the law-abiding citizen. Social revenge in punishing criminals is about as logical as punishing a man who is suffering from a manic-depressive psychosis or heart disease.

It is necessary clearly to realize that in place of making the punishment

² Harry E. Barnes, *Society in Transition* (Prentice-Hall, Inc., New York, 1939), p. 745.

³ Mary Gordon, *Penal Discipline* (E. P. Dutton & Co., New York, 1922), p. 206.

fit the crime we must in future try to realize the scientific ideal of making the treatment fit the particular criminal. This central principle of the newer penology that the criminal and not the crime is the matter of primary consideration was foreshadowed by the work of Lombroso. Either the classical or the positive theory in penology must be the basis of a consistent penal theory. In the one instance, the crime is the central fact and punishment logically is meted out to the criminal, or, in the latter instance, the individual becomes the central fact of penal consideration and the offender receives individualized treatment.

Cantor maintains that the whole question of individual moral responsibility is irrelevant in a discussion of penal philosophy. He thinks that any reformative scheme, upon which theory our penal philosophy must henceforth rest, involves as a matter of fact the assumption of determinism in behavior. "Individuals are members of society. Their behavior affects other members of society. The antecedent causes of crime have no bearing upon the social consequences of the act. Society justifiably acquires control over what one *does* apart from *why* one acts."⁴ The point is that scientific penologists do not blame and punish offenders for their evil, as has been true heretofore, rather, they recognize that the criminal interferes with the smooth functioning of society and must therefore be taken in hand. No sentimental coddling enters the picture of what a treatment program then involves. Those who cannot be reformed must be segregated for life, no matter what the crime committed. These should be treated humanely and made self-supporting if possible. The reformable prisoners receive such treatment as will reconstruct their personalities and rehabilitate them thoroughly. Examination of all convicted criminals is prerequisite to determining whether they can be reformed or need to be segregated. This is the contribution of the clinical criminologist who recognizes that diagnosis and prognosis are as indispensable in criminology and penology as they are in medicine. Under such a penal philosophy of treatment, says Cantor, "the present penal institutions and administrations would serve as archaeological specimens of the old stone age of penology." It is clear now that complete knowledge of the criminal and his background is a prerequisite to any program of treatment. After a staff of specialists in medicine, psychology, psychiatry and social case work have made a complete scientific examination of the convicted man, those who will have to deal with him will know "how he got that way" and will have a basis for judging the prospects of making him something different in the future.

Three main groups of convicts are revealed by such an examination. The first group comprises those for whom there is little hope of reformation—feeble-minded and insane criminals, diseased and degenerate criminals, and the hardened habitual criminal whose life-long career of crime

⁴ N. F. Cantor, *Crime, Criminals and Criminal Justice* (Henry Holt and Co., New York, 1932), p. 270.

does not hold out much hope of a change in attitude. Irregardless of the crime committed, such types must be segregated from society permanently. No longer dare such non-reformables be allowed to be released from prison at the end of a sentence, only to endanger society further. A second large group, the young delinquent and first offender, requires no institutional treatment at all. Any person so classified should be given a suspended sentence and put on probation. A properly trained probation staff, adequately manned to handle the problem, is in a better position to rehabilitates such offenders than is a penal institution. The third group comprises those who show promise of being reformable but who need institutional confinement and training. The real prison problem is concerned with this group.⁵

These three groups may overlap to some extent but, nevertheless, they accurately represent a basic three-fold division of convicts generally. Seemingly irreformable individuals may show signs of improvement. First offenders on probation may be found to need institutional treatment. Some judged to be reformable may become hopeless cases. Only experience and constant contact with and study of each individual offender can determine whether or not the preliminary classification was correct. Even the best hospitals make mistaken diagnoses and prescribe the wrong treatment at times.

The principle of individualized treatment to fit the needs of each criminal, motivated with the hope of his eventual rehabilitation, is today the cornerstone of modern, scientific penology. The utter hopelessness of traditional prison programs has become all too evident; mass treatment, it is realized, must yield to a new system of individualization of treatment. The function of a modern prison is not merely to incarcerate but also to remake men. Having presented the indictment of the old-time prison system and the outlines of the new penal philosophy, we now turn to a description of the new trends evident in the modern prison system.

Recent Trends in Prison Programs

(1) A desirable trend in the development of the American prison system has been that of increasingly providing specialized penal institutions for various types of offenders. We now have special prisons for juvenile delinquents, for insane criminals, for mentally defective offenders, for young adult criminals, for women, for Negroes, for sick convicts, for misdemeanants and the like. The considerations that have governed the selection of offenders for these various specialized institutions have been those of age, color, sex, mental and physical condition and seriousness of offense. The purposes of providing such specialized prisons have been to guard against contamination of one type of prisoner by another and to adapt the program

⁵ Barnes, *op cit*, pp. 743-745

and institutional facilities to the characteristics and needs of these various special groups of offenders

(2) The most significant trend in American penology during the past twenty years has been that of classification of prisoners within each institution, making possible the individualization of treatment of each inmate within each class. This policy of classification has not been generally instituted in our penal system. At present in our state and federal prisons and reformatories a routine psychological examination is provided in about 30 institutions, psychiatric examinations in 18 of them, and classification clinics in a very few

A prison classification board or clinic comprises a group of professionally trained psychologists, sociologists, social workers and psychiatrists. These various specialists examine the newly arrived prisoner during the 30-day quarantine period. The information contained in the prisoner's case history is then presented to the classification committee which usually is composed of the superintendent of the prison, its educational director, the director of prison industries, the chaplain and the rest of the professionally trained staff. A tentative program of treatment for the prisoner is then drawn up. Reclassification of the inmate, if necessary, is provided at intervals.

Sutherland thinks that classification work has generally broken down when it comes to the application of the treatment policies. "In the average institution in which classification has developed, the work of diagnosis and interpretation results in the assignment of a prisoner to a work shop, to a cell block, and to an educational grade, and practically stops with that assignment. The theory on which classification is based is in conflict with the theory of prison management, in a large proportion of the institutions in which classification work has been developed. There is a developing program for technical training of guards, and this is likely to result in an integration of the two kinds of work. It takes some time for the two groups of workers to come to an understanding of each other and to develop a coordinated program."⁶

As such classification work develops, possibilities of dealing with the individual problems of each inmate arise. Heretofore, perhaps, external symptoms rather than the dynamics of the prisoner's personality have been too much the concern of the classification clinic. Cantor claims that "thus far casework procedure has been primarily an aid to prison management and not a device for individualizing treatment."⁷

According to Sutherland, the state of New Jersey has best developed this system of classification. Each inmate receives an examination on admittance. Consultation between various departments results in the

⁶ Edwin H. Sutherland, *Principles of Criminology* (J. B. Lippincott Company, Philadelphia, 1939), pp. 425-426

⁷ N. F. Cantor, *Crime and Society* (Henry Holt and Co., New York, 1939), p. 143

formulation of a labor program, an educational program as well as other programs, worked out for and with the prisoner. Periodic reassignments may follow check-ups which are made of his record. This record, too, is considered in connection with an application for parole.

A notable experiment in a prison program attempting to apply the newer principles of individualization and socialization of inmates is that of the State Prison at Norfolk, Massachusetts. This institution is, in effect, a supervised community within prison walls. Superintendent Gill in his 1932 report stated that "the need is to establish institutions designed to discover *why* men do not live decent, orderly lives in the community and to teach them *how* to do so—in a word a community prison."

The aim here has been to institute a treatment program for each individual inmate. The casework program at Norfolk plans the lives of inmates on constructive lines. Each case history of an inmate undertakes a careful study of the individual prisoner and his environment. After the family welfare, educational, industrial, medical, community service and custodial divisions of the institution interview the new inmate, and reports have been made, an individual program for the inmate is drawn up. The inmate's house officer then assumes responsibility for carrying out the program.

The treatment program at Norfolk insures, first of all, a decent routine—"a decent bed, proper clothing, sufficient wholesome food, plenty of light and air, opportunity for exercise and recreation, reasonable contacts with relatives and friends through letters and visits, adequate medical care, and regular daily work." Such minima form the basis of rehabilitative work, they do not constitute a solution of the problem. The second aspect of the treatment program offers the inmate opportunity for constructive normal development—"strengthen home and social ties; develop vocational, educational, and avocational skills; increase healthy recreational interests; build health, and speed maturation processes through participation in the general community program; and a personal program to dissipate personal conflicts through self-knowledge and emotional catharsis by means of healthful personal contacts, discussion clubs, special reading, and the arrangement of external situations to reduce inner conflicts." Then, finally, the aim must be to reduce criminal tendencies in the inmate. A decent routine and opportunity for constructive normal development may not realize this real aim of the prison to reduce criminal tendencies. This must obviously be the result of "special emphasis given to those particular points in the general and personal program of normal development which are peculiar to any particular case." The Norfolk program, thus, marks a development through three stages from the old punitive penological system—first, a decent routine, secondly, beginnings of normal personal development; thirdly, positive efforts to reduce the inmate's criminal tendencies. Failure to understand these objectives leads to thoughtless con-

demnation of the Norfolk system and others similar to it as one of "coddling the criminal," to those who have insight and understanding it signifies "a conscious experiment in human engineering."

This emphasis at Norfolk upon efforts to restore the criminal to normal and to reduce his criminality by special treatment marks the objectives, principles and progressive policies of modern penology. As compared with the old penology, it does appear to have the advantages of decreasing the inmate's negative and unfavorable reaction to confinement and, what is most important, equip him better for his eventual return to life outside of prison.⁸

(3) One of the most progressive features in a minority of modern penal institutions is that of education in the prison. Lack of trained personnel capable of carrying on a fundamental educational program, among other reasons as we have seen earlier, makes a farce of most existing prison schools. In thirteen states no prison schools exist at all. And yet the prison represents society's final effort to re-educate, to rehabilitate and to readjust those who have failed as group members in the world in which they were reared. The importance of education to effect such readjustment is apparent.

Tannenbaum posits three inescapable objectives for a prison educational system: first, to prevent the deterioration which is an almost inevitable by-product of confinement by filling his day with interesting activity; second, to break down the prisoner's undesirable habits which he brought with him to prison by developing substitute interests and patterns of behavior; third, to inculcate new habits and interests by providing new stimuli—giving the inmate new things to do, affording new and stimulating experiences, helping him acquire new skills. As Tannenbaum says, "If the prison can provide new stimuli, in time it will call forth new habits, and if the habits become ingrained, ultimately they will produce a new person with a new character. The problem is one of forging a new community for the prisoner where community pressure becomes sufficiently insistent to call forth new behavior. If this continues long enough, the man will act differently, and if he acts differently he will become different. After all, the way of becoming a criminal is a way of learning how to become one. The process of unlearning need not be more difficult than the process of learning."⁹

Some of the contemporary penal institutions that are attempting to realize these objectives include the federal prison at McNeil Island, San Quentin prison in California and the State prison at Waupun, Wisconsin. At McNeil Island for five nights a week instruction is given in lecture

⁸ See Fred E. Haynes, *The American Prison System* (McGraw-Hill Book Company, Inc., New York, 1939), Chap. 4.

⁹ Frank Tannenbaum, *Crime and the Community* (Ginn and Company, Boston, 1938), p. 406.

courses, elementary school subjects, citizenship, Spanish, shorthand, mathematics and drawing as well as individual instruction in higher courses in English, mathematics and special correspondence courses. Instruction is adapted as nearly as possible to the individual needs and interests of the prisoners. Content is correlated to meet adult needs and to tie up the work with actual life activities. The educational development at San Quentin is regarded as highly significant. This prison enrolls 1700 men in educational classes. Instruction is given in conversational French, German and Spanish, advanced English, general history, philosophy, foreign trade and economic geography. The objective of this department of education is by every possible means to equip the men to increase their earning capacity, and, in addition, "to divert their minds to think along modern constructive channels." The number taking subjects dealing with trades and agriculture has increased greatly. San Quentin inmates can learn about vegetable and truck gardening with marketing, landscape architecture, horticulture, practical animal husbandry and the like. At Waupun, Wisconsin, two representatives from the state university visit the institution regularly to give extension courses, and reading courses are arranged on any subject for interested inmates in connection with the Wisconsin Free Library reading courses. It is along such lines that some modern prisons are attacking this problem of prison education. The need of an educational director and of adequate library facilities in each institution is obvious¹⁰

Vocational education in our American prisons continues to be ineffective and poorly organized. Most of the inmates of our prisons are unskilled workers who could for the most part be taught a skilled vocation. According to Cantor, in no prison today is the industrial, agricultural and maintenance work organized to provide vocational training. In a few institutions in New York and New Jersey, entering prisoners are assigned to various shops on the basis of mechanical aptitude tests. And yet this matter of vocational education is of major importance. No inmate can be expected to go straight on his release if he knows no trade save his professional criminal activity of robbery or gambling. Every man should on his release be able to go in the labor market with a training which will enable him to secure a decent job.

(4) When the idea of convict labor was introduced into prisons over a century ago, it was regarded as a mode of punishment. Non-productive labor devices such as carrying a cannon ball back and forth or the use of tread-mills were to enforce sentences to "hard and servile labor." Despite the fact that labor in prison has a long history in connection with the carrying out of prison sentences and as a punitive or money-making measure, large numbers of prisoners today are kept idle. Idleness is utterly demoralizing to inmates. In many prisons more than half the prison

¹⁰ See *ibid*, pp. 407-412.

population is idle. This condition of prison idleness has increased since 1934-1935, when the Hawes-Cooper and Ashurst-Sumners Acts went into effect. Perhaps no greater single evil exists in our prison system today than this condition of enforced idleness for vast numbers of its inmates.

Different systems of prison labor have been tried during the past hundred years. The type of system in use must inevitably be associated with the prevailing conception of what the function of a prison should be. Happily, the lease system, whereby for a financial consideration a prisoner was put under the complete control of a private contractor, has practically disappeared. Great cruelty characterized this system. The contract-labor system, which is still in use in a number of prisons, so obviously places the profit interests of the contractor above the welfare of the prisoner that much opposition has risen against this system. It has been shown that the contractors and prison officials supporting them have imposed cruel and abusive treatment on helpless men for the sake of private gain. In recent decades the contract system has been declining steadily. The piece-price system is a variant of the contract-labor system and about the same objections can be urged against it. The contractor under this system supplies the raw materials and then pays the state a given price per piece for the finished product. These three systems, involving as they do the private use of a public institution for private gain, are adapted neither to the needs of modern prison systems nor to the ideals of democracy.

The result has been that substitute systems of labor which are under public control have developed—the public account, public works and state use systems. The public account system retains the management of industry in the hands of prison authorities and sells the prison products in the open market. Any profit made goes into the state treasury. It hardly seems fair, however, to have a system of state industry based on forced labor and very low wages competing with private industry and free labor. It also forces the prisoners into one large-scale industry and thus prevents developing various aptitudes for different trades which the men may have. Thus it makes a mockery of any real efforts at vocational education. The public works system employs prisoners on roads, public buildings and the like. Prison farms represent the same idea. Under the state-use system the goods manufactured by convicts are used and sold exclusively to various state institutions. The public account and state-use systems are the ones chiefly in use today.

Is there any solution to this problem of prison labor? Barnes suggests that, first and foremost, prisoners must be put to work at any cost and at any kind of labor for the time being. Idleness must absolutely be done away with. Work on farms, roads, public works and in shops making crude products, even though no vocational value is attached to it, is to be welcomed. Eventually, of course, only incurables would do such work which

teaches no trade. For the reformables a system must be established which produces products that can profitably be sold to state institutions or to the public and which, at the same time, do provide vocational training. In the administration of prison labor, authorities agree that the state-use system is the best. State institutions must cooperate in buying prison-made goods when possible. If excess products remain, they should be sold in the open market under the public account system. As to wages for prisoners, they should be the same as those paid for comparable work in free life, with the cost of maintenance in prison deducted. Barnes is of the opinion that, with a rational system of prison industries, good wages are possible and prisons could be self-sustaining. There is no reason why prisons should cost tax-payers a cent. The effect of receiving decent pay on the morale of prisoners would be obvious. Then, too, they could keep their families as well as have something saved up for the day of their release.

The present dilemma needs to be resolved. Prisoners should work, but increasingly, as a result of the legislation passed in Congress in 1934 and 1935 to restrict inter-state business in prison-made goods, convict idleness is becoming more and more widespread. Many students of the problem doubt the wisdom of the policy which the Hawes-Cooper and Ashurst-Sumners Acts represent. For selfish reasons organized labor has fostered the prejudice against prison-made goods. This question of competition of convict labor with free labor has always been a bogey exploited by labor unions. Actually less than one-tenth of one per cent of productive workers are prisoners, many of whom would be employed if free. Their competition with free labor is insignificant. Even in 1880, when the use of convict labor was at its greatest, the output of prison industries represented but an insignificant fraction of total industrial production in the country. Current unemployment in private industry can be expected, however, to maintain labor's opposition to prison industry. The basic fact is that the open market for prison-made goods is gone for the present. The solution, and a solution must be found, appears to be along the line of creating better state-use systems in the separate states. "But action must be speedy," Barnes shows, "if we do not wish to perpetuate a prison system which compels convicts to alternate between rotting and rioting." An effective prison system very largely depends upon the successful creation of a scientific system of prison industry and vocational training.¹¹

(5) Provisions for health and medical service in our prisons have been found generally to be inadequate. Popular opinion seems to regard anything but the most elementary care in this regard as pampering of inmates and something to be avoided. But it is not only the duty of the state properly to care for the inmate while incarcerated, it is also greatly

¹¹ See Barnes, *op cit.*, pp. 750-754.

to the interest of society to fit the inmate for re-entrance into normal social life. Investigations have revealed a high percentage of physical and mental defects among prisoners. Removal of such defects, if possible, and improvement of health through medical and surgical treatment would seem to be basic in any attempts at reformation. The danger of spread of contagious or epidemic diseases in our overcrowded prisons is an additional reason why the health of prisoners cannot be disregarded without incurring the risk of possible serious results to the inmates and society at large.

The maintenance of proper sanitary standards in the prison undoubtedly helps the problem of discipline. Proper ventilation, heat and light in cells, decent toilet facilities, bathing arrangements, extermination of vermin, disposal of sewage, etc., are invaluable in the problems of sanitation. In all too many prisons the prison physician, who should be in charge of the general medical administration of the institution, has in reality little to say in such matters except in remedial treatment of sick prisoners. Most prison physicians are engaged only on a part-time basis. Their salaries are entirely too small in view of their qualifications and the work they have to do. As to hospital facilities, only a few prisons in this country can adequately meet the needs of present-day hospital service. Often the quarters are still those provided at the time the institution was established, the capacity is still adapted to that period rather than to the contemporary situation, and the equipment is equally out of date. In all prison hospitals inmate helpers handle most of the daily routine. Abuses follow and proper service to those needing hospital care cannot be depended on. Supervision by one trained in hospital work is an obvious need.

Physical examination of all persons sent to prison is a comparatively recent development. Sometimes this examination is a hasty, superficial procedure. Usually this examination is given shortly after admission. It is desirable to place the new prisoner in quarantine for a period until he has received his physical examination and it has been found that he has no contagious disease. About one-fourth of the state prisons and somewhat less than half of the reformatories have such quarantine periods. Although new prisoners are now almost universally given physical examinations, only about one-third examine prisoners ready for release or parole. When an examination is made, it is usually done at the request of the parole board. Prisoners found needing further anti-venereal treatment are denied parole and are detained until they are non-infectious.

The importance of proper attention to the dietary needs of prisoners is clear. In very few institutions is the caloric value of the daily food rations determined. In New York the prison law prescribes for inmates a "nutritious but inferior diet." It is the monotony of prison diet rather than any insufficiency of food that causes the trouble with prisoners. Prison officials

agree that dissatisfaction with food produces more disciplinary problems than any other single cause.

While mental or psychiatric examinations of prisoners arose largely in connection with studies to determine the causes of crime, it was found that such examinations could be helpful to prison officials in dealing with their disciplinary cases and be of assistance in parole cases. Such mental examinations are of two types: the *psychiatric*, which is concerned with the mental health of the person, and the *psychological*, which, on the one hand, determines the mental age of the prisoner, and, on the other hand, tries to discover his vocational aptitudes. Twenty-nine state prisons and reformatories examine all their inmates psychologically and eighteen also provide psychiatric examinations. Surveys indicate, however, that only a minimum use has been made of mental examinations by administrative officers, nor do parole boards use information concerning the inmate's mental condition to any great extent.

The Federal Bureau of Prisons is establishing high standards with regard to hospital and medical care in correctional institutions. Since 1930 the United States Public Health Service has been in charge of the medical work in federal prisons so that they all have highly trained medical staffs with full-time medical officers, surgeons, psychiatrists, psychologists, dentists, nurses and part-time consulting specialists. The American College of Surgeons has given the hospitals at Atlanta, Leavenworth, Chillicothe, Northeastern, and Springfield a grade A rating. Each federal prisoner receives a thorough admission examination as well as an examination before discharge. The federal government has thus set an example for the states to follow.¹²

(6) One of the most constructive ideas introduced into our American system of penal administration has been that of inmate organization for self-government within the prison. While the idea was introduced in the Boston House of Refuge a century ago and carried out extensively in the George Junior Republic, founded in 1895 by William George, it was in 1913, when Thomas Mott Osborne, one of the trustees of the Republic, established his famous "Mutual Welfare League" at Auburn Prison in New York that this new type of penal administration gained national prominence. Later Osborne applied the system successfully at Sing Sing and the Portsmouth Naval Prison. The idea of the league was simple. All prisoners, regardless of past record, became citizens of the prison self-government on an equal basis. The shop was the electoral unit of government. The government of the prison community were the popularly elected delegates. This Board of Delegates, as the governing body was called, chose from its members an executive board of nine men who were directly in

¹² See Haynes, *op. cit.*, Chap. 2.

charge of community activities. In turn, the executive board chose a Sergeant-at-Arms who selected his own deputies, to be responsible for discipline and order. The executive board also established a judicial machinery to try disciplinary cases. Various committees were set up on Sports, Education, Music, etc. The executive board and the courts were the basic parts of this prison democracy. The entire machinery of government was subject to popular approval at regular elections. A general veto power over decisions was retained by the warden.

There can be no doubt that the system worked well under Osborne. He had a remarkable influence over the prisoners. Many incidents could be related to show the change that the system under Osborne wrought in the men. Once Osborne took nine cars of prisoners from Auburn, New York, to a New Hampshire town to give a play. While returning in the dark, some of the cars got lost and Osborne returned with only two of the cars. The others kept coming in the next day until all had finally returned. A lifer was asked why he did not try to run away. He replied that the idea of running away never entered his head. He felt that if he had not come back the rest would have suffered as a consequence. Another one of the group was sure that if any one had tried to escape, the rest would have prevented him from doing so. Once, too, while the prisoners were filing into the chapel at Auburn to attend an evening concert, the lights went out. In the complete darkness an excellent chance was given to make a break for the wall. What actually happened was that the line halted automatically and remained perfectly quiet until the lights again appeared. This well illustrates how Osborne's system established group morale. Each individual realizes that the interests of the group as a whole are tied up with his own behavior. In the older prison set-up the most disobedient prisoner was a hero, in Osborne's prison community, he was a nuisance to the prison group as a whole and treated accordingly.

Despite the theoretical value of a system which develops such self-control, there are dangers. It makes possible the control of the system by inmates for their own personal advantage. The formation of cliques and the development of ward politics with shrewd men getting the offices actually happened in some institutions. Punishment of prisoners against whom grudges were held were more severe than would be given by prison officers. Prison democracy, to be successful in practice, needs not only an understanding prison warden of the Osborne type; it needs also a developed appreciation of the system by the inmates who are a carefully selected homogeneous group of men. Osborne's application of the system to all kinds of inmates, including mental defectives and unscrupulous hardened criminals, appears to be somewhat too idealistic a faith in human nature.

Actually, most places where the system was instituted two or three

decades ago have abandoned it. The Mutual Welfare League was abandoned at Auburn Prison in 1929. It has survived at Sing Sing though its functions have been considerably curtailed.

No one denies that the system worked very well under Osborne himself. Barnes is of the opinion that "whatever the temporary eclipse of his league in the present hysteria of severity and brutality, it is bound to be revived and made the cornerstone of any rational system of prison administration. Osborne will go down in history as one of the two or three great names in American prison reform."¹³ Prof. Thorsten Sellin speaks of self-government as "the most promising yet ill-fated movement in correctional education. . . . That it will be more widely used in our penal institutions as a means of resocialization, there is not the slightest doubt, but since it is an eminently delicate training instrument, which requires for its successful employment fine psychological insight and broad pedagogical understanding on the part of institutional executives and their staffs, the greatly increased use of self-government programs will have to wait until the level of administrative work has been generally raised."¹⁴

The trends we have been considering are significant in that they indicate various endeavors toward a rational penal system. We certainly do not yet have anything like a rational penal system in America. The outlines of progress are beginning to appear. A hopeful sign is the current willingness to call into question traditional penology and penal practices. This growing spirit of criticism and the increasing use of the findings of social science rather than present achievements of modern penology give some basis of hope for the future. This trend of the new penology is already quite clear. The penology of the future will avoid the use of unnecessary pain and vengeance. The ideas of vengeance and reform are entirely incompatible. Punishment will continue but only as a means to an end and not as an end in itself. It will be one method of treatment. Whatever treatment is given the criminal, it will be on the basis of individualized study and diagnosis, so that whatever method is used will be purposeful and intelligent rather than more or less blind as at present. The question of pleasure or pain to the criminal as a result of treatment prescribed is beside the point. As Morris says, "The criminologist should cater neither to the sentimentalists who would coddle the criminal nor to the sadists who would coddle themselves."¹⁵ The scientific individualization of treatment must be the aim of the penal science of tomorrow. We have had a glimpse of some new trends in penology which are being instituted by a few progressive penal institutions where a spirit of inquiry and experimentation exists. Out of them, by a process of imitation and of trial and error, will emerge the penal methods of the future.

¹³ Barnes, *op cit.*, p. 755

¹⁴ Thorsten Sellin, in *Journal of Criminal Law and Criminology*, May-June, 1933, p. 154

¹⁵ Albert Morris, *Criminology* (Longmans, Green & Co., New York, 1934), p. 514.

Parole

Most prisoners do not remain in prison permanently. Except the few who are hanged or electrocuted and the few who are confined until death, most prisoners return to the world outside prison. Under what conditions may they be released? A man may serve his entire term and then be released. No matter what his condition may be, he is free although he may still be a menace to society. He may be released under the operation of a "good time" statute. This affords society no protection, for experience shows that the most dangerous criminals invariably have good prison records. He may be pardoned by the governor, implying either innocence or society's forgiveness for his crime. This obviously should not be used regularly for prisoners generally. These three alternatives to parole release a man absolutely. The state retains no further supervision over a man who, until now, was imprisoned as a menace to society. Of the four possible methods of release, parole is undoubtedly the most desirable.

Parole is a method by which prisoners who have served a part of their sentence are conditionally released into the community under the authority and continued supervision of the state. Parole in no way suggests leniency. It adds to the period of confinement a further period of supervision during which time, if the offender fails to meet the terms of his parole, he may be summarily reimprisoned. A parolee is expected to behave himself, work regularly, stay within his state, avoid liquor, report at stated times to the parole officer and so on. Parole thus provides a gradual re-entry of the prisoner into society and enables the state to judge his fitness for freedom under normal life conditions while still under the control of the state. Release without parole, involving as it does an abrupt transition from confinement to the world outside, makes a continued life of crime almost certain. What chances to go straight does an ex-convict have as he faces the world with five or ten dollars in his pocket and a suit of prison-made clothes on his back? He is faced with suspicion and distrust. Without references, his chances to get work and to live an honest life are very slim. He is forced to gravitate back to his friends in the underworld and to a life of crime. Parole thus is necessary for social protection. Parole in a real sense should complete the educational process of reformation and rehabilitation which was begun in the prison. It is the final phase of the program of a system of modern penal treatment.

The use of parole as a method of release from prison is constantly increasing. It is, in fact, the main method for release of prisoners in the United States today. In 1933 only 37.7% of prisoners set free during the year were held for their full sentence; 50.4% were paroled, and 11.9% were released by other means. Only Florida, Mississippi, and Virginia do not provide for release of prisoners on parole. States vary considerably in their use of parole. In New Hampshire 78% are so released whereas in

Texas and Missouri the proportion is only 4%. Laws as to parole also vary from state to state. In sixteen states the minimum sentence must be served before parole may be granted. Some states rely upon the discretion of parole boards. Generally parolees are required to remain under supervision for the duration of their maximum sentences.

The principle of parole is entirely sound but present parole in practice, especially of adult convicts, is still more or less of a farce. In some states so-called parole is nothing more than an act of executive clemency. Without adequate supervision of parolees, parole becomes nothing but a way of releasing men from prison before their maximum terms are up. Unfortunately, the supervision of men on parole is all too often superficial and lax. Fourteen states have no parole officers at all. Thirteen states have only one parole officer. In most of the other states where field officers are employed they will be found to be underpaid, poorly trained men who are invariably overloaded with work, attempting the impossible task of supervising the social rehabilitation of from 300 to 2,000 parolees apiece. Only the federal government and eight states—California, Illinois, Massachusetts, Minnesota, New Jersey, New York, Ohio, and Pennsylvania have anything like adequate field forces. Only five states—Illinois, Massachusetts, New York, Ohio and Texas—and the federal government have full-time paid parole boards. Thus the issuance of paroles becomes merely a part-time activity, one of many functions which a governor, an ex-officio board or a Welfare Department is called on to perform. As a result, clerks do most of the work, meetings are hurried through to get the matter over with, and decisions involving a human being's fate are likely to be hasty and ill-considered. This lack of competent parole boards in many states has inevitably introduced the use of politics and corruption in securing the early release on parole of dangerous criminals.

It is obvious that much so-called parole is such in name only. Real parole is something yet to be realized for the most part in this country. Parole is a good example of the American tendency to pass a law containing an excellent idea but failing to make adequate provision for its administration. There is a growing realization that this is true regarding parole. If parole is to mean anything or accomplish any results, it must be a literal parole system, adequately staffed with trained parole officers and supported with sufficient appropriations so the system can operate efficiently. Reform of the parole system as it exists in most states today is an urgent need. Not until the parole work of the federal government or of states like New York and New Jersey is more generally followed will we begin to have a new day in parole. As Morris says, "The parole that penologists advocate . . . is neither a success nor a failure. It has never been tried."¹⁶

¹⁶ Albert Morris, *Criminology* (Longmans, Green & Co., New York, 1934), p. 491.

Probation

We have seen that the net effect of imprisonment is frequently to make the prisoner not a better man but rather more dangerous and degenerate than he was upon admission. There has resulted, therefore, a movement to deal with guilty persons outside of prisons, as far as possible. The rise of the juvenile courts, the use of the suspended sentence and of probation represent this new approach.

Probation is a non-punitive method of treating offenders whereby the courts, instead of committing them to penal institutions, attempt to rehabilitate them while under supervision of the agents of the court. Judges for many years have had the power to suspend sentences. Probation is derived from this judicial power. It represents a suspended sentence plus court supervision, depending on the good behavior of the offender. The purpose of probation is to help an individual make a readjustment to his community life, if possible, while at liberty, subject to restrictions imposed by the court. The terms of probation generally include the following observance of all laws, maintenance of good habits, keeping in good company, making of regular reports as required, regular school attendance or work, payment of fines or reparation. Sometimes the probationer must live in a certain specified place. Generally, the maximum period of probation is fixed by law and coincides with the maximum prison sentence for the offense. The court can then fix the period of probation within that limit. The average period of probation for all offenders in many states has been less than a year. Actually, however, the period of probation should end only when the probationer has been properly adjusted or when it has been demonstrated that probation as a method of treatment in a given case has failed. For this reason it would be better to have absolutely indeterminate probation, without a fixed maximum. Fixing a probationary period in advance contradicts the idea of individualization of treatment contained in probation.

It is the duty of the probation officer to keep the court informed as to the probationer's ability to maintain the conditions imposed on him. In case of failure, the court can warn the probationer or impose the sentence for his original offense. The probationary period in such an instance need not be counted as part of his prison sentence. If the probationer lives up to the conditions of his probation, he may be discharged from probation automatically at the end of his period of probation in some states, or the court may discharge him before or at the end of his period in some states, or the probation officer can do so without court action in some states.

In practice, usually only those who are guilty of lesser crimes involving light sentences are put on probation. The choice whether to send a man to prison for a short period, thereby exposing him to deleterious prison influences and wrecking his normal every-day mode of life, or to allow him

to return to his community for readjustment under the sympathetic supervision of a probation officer is increasingly being made in favor of the latter. New York, for instance, placed about 25 per cent of its offenders on probation in 1930. In 1931 the figures for Massachusetts were 22%, for New Jersey 32%, and for Rhode Island 50%. According to Barnes, there are about 250,000 persons placed on probation each year while about 375,000 adults and juveniles are sent to penal institutions.¹⁷

Tannenbaum cites evidence that some 70% of all probation cases are finally readjusted to society without further trouble with the law¹⁸ Not only does this represent a higher percentage than can be claimed for imprisonment, but at a greatly reduced cost besides. In New York it costs eighteen times as much per offender to imprison a man as probation does, in Massachusetts, ten times as much¹⁹ Such figures suggest that it would be a useless waste of money to imprison a man rather than to place him on probation, where this can safely be done.

The principle of probation is clearly sound. Present practice of probation in many communities is obviously open to criticism. Personnel should be more adequate, probation officers should be better trained and the system should be kept free from political interference. Successful probation demands that care be taken in selecting cases for probation and that there be careful supervision of each case. The public will gradually realize the truth of the conclusion of the Wickersham Commission that "no man should be sent to a penal institution until it is definitely determined that he is not a fit subject for probation." The most satisfactory organization of probation at present is to be found in Massachusetts and New York. Other states have the opportunity to benefit by their example.

Crime Prevention

Society is justified in exerting every endeavor to improve its methods of apprehending, trying and treating criminals. This is good as far as it goes. Little thought is necessary, however, to realize how much more fundamental than these desirable measures is the development of programs that will be effective as far as possible in preventing the commission of crime in the first place. It is true that crime prevention is a large order. Crime is such a complex phenomenon, it is so difficult to determine which the primary factor or factors are in a pattern of criminogenic forces, our knowledge of the etiology of criminal behavior is still so imperfect, that it is difficult to speak with any degree of assurance or finality about how to prevent crime. Nevertheless, it is true that enough is known of the conditioning factors in careers of crime and delinquency to justify preventive programs that make a many-sided attack on the factors revealed in crime careers.

¹⁷ Barnes, *op cit.*, p. 765

¹⁸ Tannenbaum, *op cit.*, p. 470

¹⁹ Sutherland, *op cit.*, p. 406.

Crime prevention, in the nature of the case, must involve a multiform, many-sided rather than a unitary, single approach. Experience alone will determine which programs have more potentiality of prevention than others. The public must be educated to incorporate such programs into their way of life, become institutionalized and generally accepted, just as preventive medicine has. In medicine, we accept the dictum that prevention is better than a cure. The same truth certainly holds in the field of crime.

The best treatment of the problem of crime prevention is the symposium on the subject, edited by the Gluecks²⁰. The book contains an explanation of various examples of the best types of delinquency-prevention experiments made in America. It is assumed, correctly, that the greatest possibilities for crime prevention lie in the field of child behavior. The Gluecks explain that the problem of prevention "involves a systematic, continuous attack on all fronts of social and biologic pathology. We know that included in the complex of forces in which delinquent attitudes and behavior are generated are not only those agencies specially set up to deal with violations of the criminal code, but practically all social institutions: the state, the community, the home, school, recreational center, church, welfare agency. By increasing the effectiveness of these agencies in accordance with suggestions derived from the life histories of predelinquents, delinquents and criminals, we ought to make headway in reducing crime."²¹

A skeptical eclecticism and an experimental attitude seem to govern those in charge of organized programs of crime prevention in this country. There is no doubt a measure of truth in the contention of both eugenists and socialistic criminologists that if their particular programs were put in effect a reduction in crime would result. Those who administer American crime prevention programs realize, however, that the deepest attacks upon crime are beyond their control and, accordingly, are content to do as much good as is possible within manageable territory.

From an analysis of the aims, philosophies and insights contained in modern crime prevention programs in America, as set forth by the Gluecks' symposium, certain principles that appear to govern crime preventive work in America were deduced. These principles are as follows:

(1) Crime prevention programs should take into account the evidence that most criminals show definite anti-social tendencies of attitude and behavior early in childhood.

(2) In most instances, children should be kept away from the typical contacts with police stations, courts, and correctional institutions until more scientific and sympathetic efforts have failed.

²⁰ *Preventing Crime, A Symposium*, Ed by Sheldon Glueck and Eleanor T. Glueck (McGraw-Hill Book Company, Inc., New York, 1936)

²¹ *Ibid*, p. 3

(3) An experimental attitude should govern the establishment and conduct of crime-prevention programs.

(4) It cannot be definitely concluded as yet that any one type of crime-preventive activity is necessarily superior to, or should be exclusive of, any other.

(5) Existing community agencies and institutions should be used to their fullest capacity.

(6) While much good can be accomplished by whatever qualified agency in a community assumes the leadership in crime prevention, the public schools can play an especially significant role.

(7) Although not indispensable, a crime-prevention bureau in a police department has certain unique values.

(8) Crime-preventive efforts should be discriminating in technique.

(9) A crime-prevention program should recognize that children must have ample outlets for their energies.

(10) Other psychologic and behavior traits of children should be taken into account in planning and carrying out crime-prevention programs.

(11) In intensive work with problem children and delinquents, the attitudes and prejudices of parents should not be ignored.

(12) Trained personnel should be liberally employed in crime-preventive activity.²²

The different varieties of delinquency-prevention programs are divided, largely on an administrative basis, into the following classes (a) coördinated community programs, (b) school programs, (c) police programs, (d) intramural (full-time) guidance programs, (e) extramural (part-time) guidance programs and (f) boys' club and recreation programs.

Only a brief description of the chief features of each of these behavior conditioning programs, containing the most advanced preventive methods, is possible.

(a) In the coördinated community programs, preventive activity is based on the recognition of the community or neighborhood or "area" as more or less of a cultural entity. A community-wide program is called for in view of the fact that the forces causing juvenile demoralization pervade entire regions. The essence of this program consists in the recognition of the interrelationship of the various elements in the life of the community and their reformulation, under appropriate leadership, so that wholesome values in the lives of community members may be realized. This is obviously a sociological rather than an individualistic approach to crime prevention. The Lower West Side Crime Prevention Program of New York City, as described by Frederic M. Thrasher, is a good example of a coördinated community program.²³

(b) Schools in various specific ways can be helpful in preventing anti-

²² *Ibid.*, pp 6-13.

²³ See *ibid.*, Chap. 3.

social conduct, although they have on the whole been slow to make the most of their strategic position to discover and counteract the dissatisfactions and maladjustments of pupils that may lead to misconduct. Schools should discover children who are mentally or physically handicapped or who present behavior or other special problems; special classes or schools should be provided for the study and individualized treatment of such children; visiting teachers should be employed to bridge the gap between school and home; the school system should collaborate with other community organizations and agencies.

(c) The chief activities of police programs are to supervise the "plague spots" of delinquency such as pool rooms, dance halls and the like, give advice to parents whose children are in danger of becoming delinquents, arrest adults who endanger the morals or health of youth, teach children to respect the law and its officers, and put pre-delinquent and delinquent children and parents in touch with community-welfare and health organizations and related activities. The police must collaborate intimately with the other constructive agencies in the community.²⁴

(d) Intramural guidance programs concern the work of private institutions which give full-time supervision to problem children for a period of months or several years. The guidance techniques utilized for children under continuous control are valuable in readjusting the habits and attitudes in the chief activities of life. Examples of such a controlled environment are the Children's Village at Dobbs Ferry, New York, and the George Junior Republic. They both have adequate clinical facilities for the study of children, academic and vocational curricula are kept flexible and adjustable to the needs of individual children, and only well-trained and sympathetic workers are found on their staffs. Every endeavor is made to prevent the deadening routine of institutional life from stifling the spontaneity and experimental vitality of their programs.²⁵

(e) Extramural guidance programs give part-time guidance only. They are without the advantage of full control of their clientele. The programs described include clinical experiments especially established for children with behavior problems. The Worcester, Mass. Child Guidance Clinic is one of the most promising of the many child-guidance clinics established in the United States, devoted to experimenting in the diagnosis and treatment of delinquent children. The various types of therapy used at Worcester, as described by Samuel W. Hartwell, are particularly significant.²⁶ An unusual experiment is that of the Domestic Relations Court of Franklin County, Columbus, Ohio, in educating the parents of young children who are on probation to understand their children's needs and misbehavior. Another example of an extramural guidance program is the Big Sister

²⁴ See *ibid*, Chap 12

²⁵ See *ibid*, Chaps 15 and 16.

²⁶ See *ibid*, Chap. 18.

Service in Rochester, New York. All of these programs are without full control of their clientele and so must depend largely for their success upon the intimacy of contact which they can establish with those sent for guidance. This is a challenge to putting forth their best effort.

(f) The boy's club illustrates the group-work method of supervising the leisure time of children. There is growing recognition that boy's clubs should concern themselves with "difficult" or "problem" or "queer" or even downright delinquent boys, as well as with normal boys. Emphasis is being placed on the value of a survey of neighborhood conditions and boy life as a pre-requisite to the establishment of boys' clubs. An understanding of the psychology of childhood and adolescence, especially with regard to the process of "socialization" of anti-social attitudes and conduct, is to be noted in modern boy's club work.²⁷

According to the Gluecks, the fact that there is an awakened recognition in various communities of the social conditions that are crimogenic and the growing desire of citizens in these communities to ameliorate these conditions, the example of a variety of crime-prevention programs without any slavish adherence to a cure-all, the experimental attitude that dominates such programs and the desire to test processes by results, the increasing use of technically trained leadership in addition to valuable volunteer work in preventing crime—all these are evidence, as the Gluecks conclude, such as "justifies our looking to the future of crime control with at least some degree of optimism."²⁸

Crime prevention in the modern world is without doubt merely in its initial stages. A multiform rather than a unitary approach to the problem is indicated. In general it may be said that eugenic provisions that children shall be well-born deserve support. The fact that crime prevention is basically an educational problem indicates the necessity of creating a rational and effective education system wherein proper ideals of American citizenship and respect for law are inculcated and adequate manual or vocational education is provided to insure ability to earn an honest livelihood. The removal of slums and "delinquency areas" and the establishment of municipal recreational facilities should go on apace. The successful amelioration of economic factors that encourage crime in our civilization such as poverty, unemployment, industrial unrest and personal insecurity will always be an end to strive for. The devitalizing idea that "only saps work" must somehow or other be rooted out in our civilization. The prevalent "something-for-nothing" psychology and the idea that it makes little difference how you make your money, only so you make it, illustrate the false values that determine criminal conduct in America. If our country wishes to get rid of organized crime and racketeering, our fundamental values must cease to be determined by the dollar. Something closely akin

²⁷ *Ibid*, pp 13-22

²⁸ *Ibid*, p. 22

to a moral revolution in our American life is needed to accomplish this. A resurgence of American idealism so that materialism ceases to be our national faith, fundamental education of youth in the standard of values that we wish to shape our lives, are necessary if we are going to prevent in any degree the striking and costly phenomenon of American crime. Only thus will it be possible to set an example for our criminals as to the real goals of American civilization.

The unsocial results we witness today in the prevalence of crime and racketeering are an outgrowth of existing American civilization. To change these destructive results we really must alter the society which permits them to flourish. Only when the process of interaction between the growing child and the social situation in which he grows up, resulting as it does in the patterning of behavior, produces as a normal process social rather than anti-social attitudes, law-abiding behavior rather than cynical, law-breaking behavior, will crime begin fundamentally to be eliminated from our American civilization. Modern crime presents such a serious threat to the survival of our civilization that support of a many-sided program of crime prevention must be accepted and supported as a fundamental part of our way of life. Only to the extent that we succeed in these measures attacking the roots of American crime will this threat to the stability of our civilization be removed, only thus can we free ourselves from the burden of our annual crime bill of billions of dollars under which we stagger today.

PART XIII

Government

CHAPTER 57

THE AMERICAN CONSTITUTIONAL SYSTEM

The Nature of Government

Mr Justice Cushing early in the history of our constitutional system described a state as "a body of free persons united together for the common benefit, to enjoy peaceably what is their own and to do justice to others."¹ While this definition is highly suggestive of the goal of democracy, it does not identify sufficiently for the student the earmarks of the sovereign state.

The first element is a group of persons. The Constitution of the United States opens with the phrase, "We the People of the United States." While the legal scholars may differ as to the significance and meaning of this phrase in the preamble, to the popular mind it has democratic force similar to the famous utterance of Lincoln at Gettysburg.

The preamble refers not only to a group of persons but also to their common purposes: "in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

The last phrase in the preamble, "for the United States of America," identifies a second characteristic of the sovereign state. It occupies a specific, geographic area, in which lives the "body of free persons united together for the common benefit." This geographical element distinguishes the sovereign state from a racial group or a religious body, both of which may be spread throughout much of the world, within many nations.

A third essential of the sovereign state is independence, a freedom from foreign control. This is a popular conception of sovereignty. A "colony" or a "territory" or a "possession" of a "mother country" does not have this complete autonomy, for such an area "belongs" to or is "subject" to another power.

Finally, there is implicit in the sovereign state a common authority which is supreme. It is through this agency that the collective and sovereign will is determined and put into action. This supreme authority we call "government." A democracy seeks to make it a government of, for, and by the people. In this respect, the phrase "a body of free persons" may have double force. It may be held that "free" means sovereign—that is, a group that is

¹ Concurring opinion in *Chisholm v Georgia* (1793), 2 Dall. 456

independent and free from foreign direction. "Free" may likewise be held to refer to the democratic ideal of "We the People," supreme in authority and internal organization of domestic affairs.

It will be seen later that the "people" who may participate actively and legally in this self-government do not include the entire population. The representatives and agents of the people in government may be chosen only by those entitled to vote. Reference will be made in another chapter to the laws concerning suffrage and to the extent to which this privilege is exercised.

Areas and Functions of Government

There are many "governments" in the United States. A voter may participate in the election of officials in several different governments, particularly those in his city or town, his county, his state, and the nation. Each of these governments has its own functions, authority, officials, and area.

Government may be described in terms of functions and services performed within a specified area and jurisdiction. The constant supply of pure water for the household, delivered in pipes within the house, the regular deliveries of mail and parcels at the door, the protective services of the fire and police departments; the courts of law to enforce laws protecting the person and property; the system of free education: these are but a meagre few of the countless services and functions performed by varying classifications of government in the United States.

Government may be described in terms of rules and regulations that restrain or prescribe a course of conduct. These may assume the technical forms of laws later to be identified as treaties, statutes, executive orders, and ordinances. Ordinances forbidding the pollution of water; rates established by the water commission, traffic regulations and preventive fire ordinances; the rules of court procedure and the laws protecting the person and the property of the citizen which the courts enforce, the requirements with regard to school attendance and the standards of scholarship and conduct required of the pupils: these too are but a few of the evidences of the restraining and regulatory character of government.

At another time we shall see that government may be considered as the effective medium of articulate pressure groups seeking advantage or special protection within the area and province of the particular government. One section of a town may wish a new schoolhouse serving that area; its residents may "pack" the town meeting and so outvote the others when that article on the warrant is reached. The concerted action of a group of labor leaders may cause the city council or the state legislature to broaden the protective laws of that area pertaining to such labor.

Groups of business men may persuade the municipality to engage in either more restrictive or liberal actions pertaining to their types of busi-

ness or others. Church groups may lead in the enactment of laws prohibiting baseball on Sundays in a city, or of laws by Congress further regulating the liquor traffic. Business men or a whole agricultural region of the country may bring pressure to bear upon Congress to provide for a protective tariff for their commodities.

Fully considered, government is all of these things, at all times, in every form and area of government. Government serves, aids, protects. Government restrains, regulates, directs. Government exists for the common good; it may be utilized by minorities for their special advantage.

These numerous governments in the United States have sometimes been represented as a pyramid, with the vast number of local governments at the base, pointing to the central government at the top. They may too be represented as a series of graduated circles, one within the other, and all touching at one point, the individual.

These overlapping governments might well conflict seriously. Citizens then would be caught, perhaps helplessly, between opposing authorities. This conflict is reduced, if not prevented, by our adherence to a group of basic principles which by law and custom have become established and form the foundation of our American constitutional system.

Federalism

One of these active, basic principles is that of federalism. The student is familiar with the word "federal." The terms "federal government," "federal laws," and "federal courts" are well known to him as meaning the government, laws, and courts of the United States—in other words, the national government, laws, and courts, as contrasted with those of the states and other subdivisions of government.

By "federalism" is meant something more than that. The concept of federalism is that which refers to the divided authority of government. Under this principle, the national government is viewed as sharing some of its authority with certain specified subdivisions of government. In fact, the latter may even have some powers that are denied to the national government.

In the United States the units of government that divide the powers of government are the national government and the forty-eight separate states. Students of government call this "dual sovereignty." We need not here be concerned with the abstract problem in political philosophy as to whether "sovereignty" can be divided or whether the individual states in the Union are therefore in themselves sovereign.

The Constitution of the United States provides for this dual sovereignty, this sharing of powers between the national government and the states. As we shall see, the Constitution provides that certain powers are to be exercised by the national or federal government.² Certain powers are denied

² *McCulloch v. Maryland*, 4 Wheat 316 (1819).

to both. Certain powers are denied specifically to the states. And the residual powers of government are considered as remaining in the states³

This division of authority is suggested in the constantly recurring battle-cry of "states' rights," with which everyone is familiar. Many of our most bitter controversies have raged as to where the line of authority is properly to be drawn between the lawful jurisdiction of the national government and that of the several states, in specific matters. We shall have occasion to study some of these perplexities later. For example, should child labor be regulated by federal or state laws?

In many countries, such as England, the principle of federalism does not prevail. There the government is more fully pyramided and centralized, as the structure of management in most modern corporations. The student of history will find the reasons for the development of federalism in this country.

Historical Background of Federalism

The states, as colonies, were already highly organized with separate, individual governments long before the American Revolution. These governments differed in framework and were considered by their citizens as entities in themselves. The social strata and customs differed in the several colonies and served further to differentiate.

Trade in the colonial period was dominately local. The men of commerce thought of independence from England in terms of improved trade conditions for themselves and their areas, and not in terms of the American "nation" that might ensue. They quite naturally felt, for more material reasons, perhaps, the warm loyalty for their state that carried over from the particular communal spirit of the aspiring colony it had been. Communication and transportation in those days were necessarily so abbreviated that the exchange of ideas as well as trade was retarded. Even men of prominence with a more "national" vision were not so able to associate throughout the colonies as to make themselves felt vigorously.

Evidence that the early states thought of themselves as a loose confederation of separate governments is found in the Articles of Confederation establishing the first national government of the United States. A national government was looked upon as a mere convenience. It was not considered a central power, and certainly not as a super-power. Accordingly its real powers were few and its influence weak.

Many conditions and elements were making for the feasibility if not the necessity of a fusion of interests pointing towards a closer union. The eighteenth century Americans had much in common. They did not come from as diverse racial and national stocks as contemporary Americans. While religious differences were perhaps felt more keenly then, they were not insurmountable. A common tongue naturally aided in intercourse and

³ *Leser v. Garnett*, 258 U.S. 130 (1922)

understanding. Moreover the colonial states possessed a common legal understanding, in their inheritance of the English common law. They had, after all, made together a common decision to revolt and had shared the privations of war against the French, Indians, and British. Transportation was improving, the population growing, and trade was expanding.

Meanwhile the trade rivalries between the new states became acute. Discriminatory laws were met with bitter retaliation. These became such obstacles to the now expanding trade that those who had championed a really national government found their cause at last growing. Moreover, some of the men of property began to fear encroachments by the states wherein evidences of the disregard of the unprivileged for the sacred right of property and the rights of the propertied were already making themselves manifest.

It is not surprising, however, that there was not common agreement as to the character of the federal government to be established. The states were quite naturally reluctant to surrender their many rooted powers, even as the nations did not choose to give of their powers sufficiently to make the League of Nations a real international government.

The men of commerce did not relish laws and regulations imposed upon them from some distant point and by representatives of other areas, any more than they and their fathers had liked rule from remote London. In their minds, democracy and self-rule meant local government. They visualized this as the government of a state—their own particular state—which gravitated about a center of one or two commercial cities. Yet they saw the necessity of a stronger and a more really national government with sufficient central power to keep other states than their own in some check.

Clearly neither of these two viewpoints could triumph. Compromise was inevitable. This compromise was federalism. It was woven firmly into the Constitution of the United States. In it, specific powers were given exclusively to the national government—powers that should be adequate for the making of a strong central government. The remaining powers were left, by constitutional command, to the states, where they had resided. In this way were the states, jealous for their separate rights, appeased. In this way were fears allayed that the national government might become a too strong, dominating, central government.

Limited Government

Another principle of our constitutional system is that of a limited, responsible government. The safeguards for this principle are many, in the law of the Constitution and in customs now so strong as to have the force of constitutional law.

Phases of federalism itself enforce this principle that government shall be answerable to its people and be limited in its arbitrary exercise of power. For example, the states may not coin money. They may not tax imports

or exports. The federal government may not so regulate commerce as to give preference to the ports of one state over the ports of another. The states are to be guaranteed a republican form of government and to be protected against invasion and domestic violence. Of such are some of the limitations upon the two divisions of government.

As we shall see, a system of checks and balances has been set up within the framework of the national government to prevent usurpation of absolute power by any one branch. The President may appoint officials, but in many cases only with the advice and consent of the Senate. The President may veto legislation, but the Congress may subsequently pass it over his veto. The President appoints the federal judges, but they are removable only by impeachment. By its own interpretation and the sanction of custom, the Supreme Court may invalidate an act of Congress when it deems it unconstitutional.

With regard to the citizens, our American government is likewise intended to be limited and responsible. Requirements of due process of law and restrictions against the violations of civil liberties act as restraints upon the government. Protection of suffrage delimits arbitrary government and increases the prospect of a responsible government. The system of party elections, which has grown up through custom, gives voice to the people's choice of representatives and agents. Some states permit the citizens to recall their public officers, as well as to initiate legislation directly at the polls. These and other safeguards enable the voters to have as responsible, as wise and efficient a government as they collectively desire and demand.

Separation of Powers

Another constitutional principle is that of separation of powers. This doctrine recognizes three branches of government: the legislative, executive, and judicial. The functions of government are held to be properly divided among these three.⁴

The function of the legislative body, elected by the voters, is to make the laws of the people. These laws are carried out, or administered, by the executive who is elected by the people. The function of the judiciary is to interpret the law when controversies arise and are properly brought before it. The judiciary is appointed by the executive in the federal government and in many states, although elected by the people in other states.

The doctrine of separation of powers holds that each of these three branches is supreme in its field. It may not encroach on the activities of either of the other two.⁵ It may not delegate its power to any other body or agent.⁶ While the doctrine is not expressly stated in the Constitution of the United States, it has been incorporated in some state constitutions.

⁴ *Mississippi v. Johnson*, 4 Wall. 475 (1867)

⁵ *Schechter Poultry Corp. v. U.S.*, 295 U.S. 495 (1935).

⁶ *Hampton v. U.S.*, 276 U.S. 394 (1928)

Its advocates hold it to be implied in the federal government by the very structure of the Constitution. They point out that the Founding Fathers set forth these three functions in separate articles. Article I has to do with the powers of Congress. Article II has to do with the powers of the President. Article III has to do with the powers of the Judiciary.

On occasion the Supreme Court of the United States has enunciated the doctrine. Certain New Deal legislation has been declared unconstitutional by the Court on the ground that Congress in giving the President authority to fill in broad details of economic regulation was violating the doctrine by an excessive delegation of legislative power.

Yet it is to be noted that the Constitution itself does not sharply adhere to it. The presidential veto power is negative legislation. The requirement of senatorial confirmation of some presidential appointments is activity in this sphere of the executive. The President and the Senate together share the legislative power of making treaties.

Later we shall see other variations from strict adherence to the doctrine of separation of powers. The power the Supreme Court wields in invalidating an act of Congress is a direct interference with the legislative action of the chosen representatives of the people. The functions of some of the so-called independent commissions are in part administrative, in part legislative, and in part judicial.

Some object to the particular division of functions that the doctrine calls for. They argue that there are only two major functions of government, the making of laws and their enforcement. This school of thought views the judiciary as an arm of the executive branch of government. Moreover some point to the fact that in practice the functions of government as represented by these three branches are often fused, even in the case of a minor official who necessarily is interpreting the law it is his duty to enforce and may be exercising a judicial judgment in its execution.

Therefore in practical fact an absolute separation of powers is difficult. If a system of checks and balances is to be maintained it may even be undesirable. Moreover, efficient management of human affairs does not always permit their separation into arbitrary, positive, and water-tight compartments.

Judicial Review

Contrary to the opinion of many, the doctrine of judicial review is not peculiar to the United States. Over a dozen other, though lesser, nations embrace the principle. The United States is however the outstanding example of its exercise.

This doctrine involves the power of the courts to declare legislative acts unconstitutional and therefore invalid. The Supreme Court of the United States has declared both certain laws of Congress⁷ and certain state laws⁸

⁷ *Marbury v. Madison*, 1 Cranch 137 (1803).

⁸ *Fletcher v. Peck*, 6 Cranch 87 (1810), *McCulloch v. Maryland*, 4 Wheat 316 (1819).

unconstitutional. This power is exercised by the highest state courts with regard to laws of those states.

Sharp critics of this function of the courts call it a usurped power. They point out that it is nowhere expressed in the Constitution. They argue that so vital a veto of legislation would have been imbedded in the national constitution if the creators had intended it as a part of our American system.

These critics further contend that legislation is the particular prerogative of the Congress and the legislatures. They assert that correction of faulty legislation can take place at least indirectly at the polls. Some say that it even makes for inferior legislation, since the courts may have occasion to interpret and virtually restate the law. Others condemn the power over legislation exercised not only by merely nine men not responsible to public opinion, but even by a single justice in the case of a split decision.

The proponents of the doctrine argue that federalism alone demands that judicial review be available, lest the states invade the sphere of the federal government, or the federal government diminish the constitutional powers of the states. They do not agree that it makes for faulty legislation. In fact they argue that it is a safeguard against hasty and unwise legislation, because on the one hand it serves as a spur to regard for the Constitution, and on the other hand it may serve as a check upon such undesirable legislation when it occurs. Perhaps the strongest argument for the doctrine is custom. The power has now been exercised for over a century. It has been recognized and accepted by the people. It is as much a part of our constitutional system as any formal amendment to the Constitution.

Due Process of Law

Two amendments to the Constitution state that neither the federal government⁹ nor any state¹⁰ may deprive a person of life, liberty, or property, without due process of law. Originally this meant that the individual was to be safeguarded from arbitrary or unfair actions by certain procedures at law. These may be broadly summarized by the popular term "a fair trial." The concept has become broadened to include substance as well. That is, the subject matter of legislation itself may be subject to judicial review as to constitutionality.

Procedurally, sufficient notice of the time, place and matter must be given to allow the person opportunity to be ready for the trial. He is entitled to have his "day in court," with opportunity to present his case before an impartial tribunal. He has the right of counsel, the right to bring witnesses, and the right of appeal.

Jurisdictionally, due process refers to the area of authority of the court

⁹ Fifth Amendment

¹⁰ Fourteenth Amendment.

or official. Just as a police officer of one city does not have authority to make an arrest in another city—or therefore jurisdiction—so too the court must be one having proper jurisdiction. Its jurisdiction may be limited by the domicile of the parties. It may also be limited by the category of law it is empowered to interpret. It may be further limited by the character of the case brought before it.

Substantively, the courts scrutinize the subject matter of legislation. A person may have been accorded every proper degree of care in the procedural conduct of the trial. The officials and the court concerned may have had full jurisdiction over the persons and matter involved. But if the statute involved in the particular case in fact bestows, for example, upon an official a power contrary to the Constitution, and a party to the case so challenges it as a condition depriving him of due process, then the court may declare that statute unconstitutional for that reason, if the court comes to a like decision.

The courts guard the constitutional freedom of the individual with regard to his life, liberty, and property from abuse of their powers by legislative bodies and administrative officials. This judicial broadening of the concept of due process may be found especially in cases interpreting the police power, the taxing power, the right of eminent domain, and the civil liberties.

The principle of due process of law has produced many violent controversies in public discussions and in the courts. Cases coming up before the Supreme Court pertaining to due process, under both amendments, are more numerous than any other constitutional question. In some years they have been the issue in as many as one-half the cases.

Other Limitations on the Governments

Our constitutional system includes many other principles operating for the protection of the individual. Some of these may be briefly enumerated. Others will be treated more fully in other chapters.

An interesting prohibition in the Constitution is aimed at bills of attainder.¹¹ This means that a person can not be arbitrarily thrown into prison and his properties forfeited. Such an action was a device of the royalty in former times and its prohibition is clearly a vital protection to all in a modern democracy.

A person who is arrested has the right of a writ of habeas corpus.¹² This ancient writ has as its object the bringing of this individual before a court or judge. This is to prevent a person being cast into jail without an opportunity to be faced with his accusers in open court within a reasonable time.

Likewise a man can not be punished for an act if it was lawful when

¹¹ *Ex parte Garland*, 4 Wall. 333 (1867).

¹² *Ex parte Merryman*, Fed. Cas. No. 9487 (1861).

committed. This is prevented by the forbidding of the passage of retroactive criminal laws, called *ex post facto* laws.¹³

Congress may not interfere with a person's religious freedom. For instance, there may be no religious bar for qualification for holding a public office.¹⁴ The right of freedom of worship does not however guarantee immunity from conduct that may be deemed anti-social¹⁵

The guarantee of free speech and a free press seeks to safeguard the individual from that censorship foreign to a free people and a genuine democracy. In another chapter we shall see that the definition of this freedom, as interpreted in the courts, may be flexible, particularly in time of war.

The inviolability of the home is protected by the guarantee against "unreasonable searches and seizures." It is further protected by the requirement that a search warrant must be specific as to place, persons, and reasons. Both of these protections are valuable to prevent arbitrary and corrupt practices.

One of the greatest safeguards of a democracy provided for under our Constitutional system is the right to vote. This can not be denied or abridged either by state or federal government on account of race, color or sex. Qualifications for voting may be required but these must be reasonable.¹⁶ We shall see later to what extent state laws and the practices of the political parties may reduce the number of those enjoying the privilege of suffrage. That some discrimination is possible may be seen from a recent decision of the Supreme Court which permits discrimination against races by private political parties, which are not officially recognized by the Court.¹⁷

The Nature of the Constitution

Many point out that ours is a written Constitution and England's an unwritten Constitution. The distinction is an incomplete one. To be sure, we have a formal single written document, setting forth basic principles of government and the powers and limitations of the people's agents. England does not have such a document. Yet England's government is referred to as a constitutional one.

A series of great historical documents and certain fundamental acts passed by Parliament are considered as England's Constitution. Scholars point out likewise that the deep-rooted heritage of the common law and the succession of noteworthy decisions on points of law as handed down by the courts in England have established fundamental doctrines that even Parliament would tamper with only at risk of great public disapproval.

¹³ *Calder v. Bull*, 3 Dall. 386 (1798).

¹⁴ *Meyer v. State of Nebraska*, 262 U.S. 390 (1923).

¹⁵ *Reynolds v. U.S.*, 98 U.S. 145 (1879).

¹⁶ *Williams v. Mississippi*, 170 U.S. 213 (1898).

¹⁷ *Grove v. Townsend*, 294 U.S. 699 (1935).

Similarly in the United States the courts and custom have played a large part in molding our constitutional system of which the Constitution itself is but the core. Evidences are numerous of practices not mentioned in the Constitution assuming through the years the force of clauses in the Constitution. For example, the Constitution is silent on the subject of the appropriate number of terms for a President. Yet so strong is public opinion on "no third term" that violent opposition arose in both parties and in all sections of the country at the suggestion that Franklin D. Roosevelt run for a third term and thus break tradition and custom.

Subsequently we are to observe in detail other evidences of the part played by custom and interpretation in the expansion of the Constitution. The Cabinet is not mentioned in the Constitution, as such, and yet it has become an established part of our governmental system. The conference committee of the two houses, recognition by the President of new governments, the decentralized system of independent commissions, the nature of the Presidential succession in the event of death, and the political party system itself have all grown into our pattern of government outside of the express terms of the Constitution. We shall see that the electoral college provided for in the Constitution has become a mere technicality in the system of elections that custom has developed.

Not only the courts interpret the Constitution. The President, in the exercise of his ordinance power, interprets the Constitution. Congress, particularly in social legislation, is interpreting the welfare clause and many others. For example, the Constitution says that a Representative must have "attained" the age of 25—but when? Congress has interpreted that to mean by the time the member enters upon his duties. Other public officials and even the public itself may adjudge the "constitutionality" of actions, present and proposed. But, in the final analysis, the Constitution "is what the Supreme Court says it is."

The Judicial System

Reference has been made to the acceptance by the nation of the doctrine of judicial review, giving rise to a judicial supremacy which certainly is not expressed in the Constitution itself. This principle was most forcibly enunciated in the leading case of *Marbury v. Madison* by Chief Justice Marshall in 1803.¹⁸ While it has often been debated since, it is clear now that it is woven as firmly into the fabric of our constitutional system, through acceptance and recognition all these years, as any concept in the Constitution itself.

The function of the system of courts in the United States is to interpret the laws enacted by the representatives of the people. Besides many special courts there are three systems of courts: federal (national), state, and municipal or local.

¹⁸ 1 Cranch 137

The federal courts are pyramided at three levels District Courts, Circuit Courts of Appeals, and the Supreme Court of the United States There is at least one federal district court in each state. The larger states have more, in accord with the volume of litigation. There are eighty-four such district courts. The federal district court is a court of first instance. It hears cases of an enormous variety, arising particularly from violations of federal laws and from the interstate character of modern business.

If a party to a suit in a federal district court loses and wishes to appeal the decision, he then seeks a hearing before a Circuit Court of Appeals. There are ten Circuit Courts of Appeals with two or more judges sitting in each court. The function of such courts is only to hear appeals from the lower federal courts and from the rulings of administrative agencies. They do not have original jurisdiction and in many instances their decision is final. Consequently the Supreme Court is relieved of a considerable burden of cases that might otherwise be appealed to it.

The Supreme Court of the United States

The Supreme Court of the United States holds its sessions in its handsome new building in Washington. It has not always been held in the awe and reverence accorded to it in our time. It has not always been composed of nine men. The Constitution is silent as to its size.

The Supreme Court sits as a group in hearing cases before it. The nine justices discuss and vote upon the briefs in secret conference. Customarily the Chief Justice assigns to one of the justices the task of writing the Court's decision, unless another on the Court requests the privilege. The Chief Justice may, as Chief Justice Hughes often does, write the decision himself. Other justices may, if they wish, write "concurring opinions"—that is, opinions in agreement with the vote of the Court, but expressing individual and independent judgment.

Since a majority vote determines the opinion of the Court, the dissent may express its viewpoint too, and often does. In fact, to lawyers and students of public affairs the dissenting opinions may assume considerable importance, particularly when they occur with regard to highly controversial economic and social issues. Due to changing concepts and to the changing composition of the Court, dissenting doctrines in some cases have become majority opinions in later instances.

Cases may come into the Supreme Court by appeal from five sets of courts, under certain circumstances at discretion of the Court—the federal Circuit Courts of Appeals, the federal District Courts, the highest state courts, Court of Appeals of the District of Columbia, and certain special federal courts, such as the Court of Claims.

The Supreme Court of the United States under the Constitution receives certain cases directly in the first instance. This is called original jurisdiction. All cases affecting ambassadors, other public ministers and consuls,

and those in which a state shall be a party come within the original jurisdiction of the Court. The Court itself has held that Congress may not regulate the original jurisdiction or procedure of the Court. In two cases a century apart it has held that Congress may legislate the subjects of appeal, as well as establish the original and appellate jurisdiction of the lower federal courts.

The judges of all federal courts are appointed by the President, subject to confirmation by the Senate. The appointment is for life and removal is by impeachment. Congress has the power to create or abolish judgeships. While Congress may determine the size of the Supreme Court, under the Constitution it could not abolish it.

The decision of the Supreme Court is final. An illustration of its extreme judicial supremacy may be given. Let us suppose a bill has been passed unanimously by the 435 members of the House of Representatives and by the ninety-six members of the Senate. As we shall see, the President might veto the bill. But such a unanimous vote might well result in the Congress passing the bill over his veto. In the first instance the President was on top, now Congress has the upper hand. But its victory may be brief.

Let us further assume that the President may have vetoed the bill because he questioned the wisdom of such action. In fact the action may be challenged as to its constitutionality in the courts. The Supreme Court in exercising its self-asserted power of judicial review may find it an unconstitutional statute and so be able to wield a check on Congress greater than the chief law enforcement executive.

From such a decision there would be no recourse other than an attempt to amend the Constitution to give Congress that particular power it sought to wield, or until a like-minded court developed.

Character of the Court

Periodic discussions have arisen as to the character and role of the Supreme Court. Such were particularly numerous when President F. D. Roosevelt raised the issue of a "conservative" court and proposed increasing its membership to change the balance of viewpoint on it.¹⁹ The Court has been "packed" before and such a suggestion was not new to students of politics.

Briefly, a "conservative" judge may be termed one who is first a legalist

¹⁹ During the second term of President Roosevelt this change of balance was effected by his appointment of five Justices to fill vacancies. Justices Black, Reed, Frankfurter, Douglas and Murphy. During his third term he may have at least three more vacancies to fill. By recent law, members of the Court who have reached the age of seventy and have served at least ten years on the bench may retire at full pay of \$20,000 a year. Chief Justice Hughes and Mr. Justice McReynolds are thus eligible for retirement, if they choose, and Mr. Justice Stone will reach the retirement age in 1942. Mr. Justice Roberts will not be of retirement age until after President Roosevelt's third term expires.

and second, if at all, a social philosopher. Hostile critics accuse him of viewing the Constitution as a static document, which must be interpreted with strict legalism lest the constitutional foundations waver. He follows closely too the rule of *stare decisis*—the line of judicial precedent—lest the law become a welter of unpredictable uncertainties and a confusion of exceptions.

A “liberal” judge is frequently termed a social philosopher first and second, if at all, a legalist. He is said to view the Constitution as a living organic document, capable of adjustment to a changing industrial society. He is said to emphasize social justice more than the established “legal rights.” He does not view the expansion of federal powers with alarm, if they seem to be attuned to the exigencies and progress of the nation. Often, however, he may be as staunch a supporter of “states’ rights” as the “conservative” judge.

Certainly his social philosophy has been as much considered in the appointment of a justice as his capacity and ability in the law, in the case of many justices in the past. Some times this consideration has been loosely referred to as the particular “politics” of the man. Quite naturally a President appoints men whose viewpoints he admires, so far as he may know them—although the instances are several of presumably “conservative” appointees emerging as “liberal” judges.

Those who wish to “reform” the Court are in part or in full opposed to the extent of the power of judicial review. Some advocate that a statute be declared unconstitutional only by a unanimous or at least two thirds vote. They feel that so vital an issue should be more clearly resolved than by a five to four decision. But it should be noted that in either of the proposals the vote of a single justice would still tip the scales.

Others advocate that the Court be composed in part of non-lawyers. They point out that much of the work of the Court is concerned with issues and data that are deeply technical and often economic, for which a legal training alone may not be sufficient for expert judgment. They would offer instances relating to railroad rates, taxation, public utility valuation, and price structures. In absence of a system of administrative courts composed for the most part of experts in the fields involved, there is a persuasive cogency to this line of reasoning.

Courts Other Than Federal

A comparable pyramid of courts exists in each state, with some variation of the pattern. The municipal and police courts usually constitute the initial stage in the state systems. In some states the justice of the peace is at the bottom of the judicial system, having jurisdiction in a few petty disputes; in other states he is little more than a notary public. Often county or district courts have original jurisdiction for major offenses. Since the courts may vary in name and jurisdiction at approximate levels in the several

states, one needs to become acquainted with the judicial structure of his state separately

One sharp difference between the federal courts and the other systems should be observed. While, as stated, the federal judge is appointed for life, the judges in many state and municipal courts are elected for a specific term by the voters. Those who favor the former method point to the high quality of person often appointed by presidents and such governors having the appointing power. They emphasize the greater freedom from politics of such appointees, with the result of a more impartial judiciary.

Those who favor the elective process find it more in accord with democracy. They assert that, particularly where the device of recall exists, the elective process gives the voters an opportunity to remove unworthy judges and fill the posts with men of superior caliber and integrity. Even though admittedly more democratic in form, it is not clear that the people always choose more wisely than the appointing executives, especially where the political machines are at work. Yet even the federal courts are not free from the evils of the spoils system as will be noted in a later chapter.

Expansion of Federal Power

All three branches of the government have had part in the growing expansion of federal power. The strict adherents to federalism and those most strongly insistent on states' rights oppose this expansion earnestly, even vehemently. They view it "unconstitutional," foreign to "true democracy," and as a step in the direction of fascism.

Those in favor of the trend point to the decline in importance of the state. This decline is attributed to various causes. Some refer to the cumbersome inefficient governmental machinery in many states. Graft, political bosses, and strong party machines are likewise blamed. The inertia of the voter with regard to state and local matters is cited. To many the changing character of our industrial society has brought about a lessening of the significance of the state as a governmental unit.

As emphasized in other chapters, our modern industrial society has been responsible for the development of the corporation, public utilities, large scale production, pressure groups, nation-wide advertising of national brands, the automobile, the airplane, the radio, and the movies. These activities and their ramifications do not stop at state borders. They have extended the horizon of the citizen. He is less insular and provincial in his thinking, his recreation, his interests, his purchases, his job.

Dust storms, floods, agricultural prices, industrial strife, and the countless economic problems of modern society have become greater than the county or state in which their full force may be most severe. These problems, in their effects, if not in their scope, are increasingly interstate, if not strictly national. So there has been growing demand that the federal government "do something about it." Response to this growing demand

will be found in the complexity of boards, commissions, bureaus to perform the new and increased functions of the national government, particularly in the field of business.

Supremacy of the National Government

Wherein lies the supremacy of the national government, allowing it to expand at the expense of the states? The Constitution gives certain express powers to the national government, the residue to the states, unless specifically denied to the states. Herein appears the importance of the Supreme Court. Its function of interpreting the law permits it to identify the scope of these powers.

As early as 1819 Chief Justice Marshall gave impetus to the supremacy of national law, in *McCulloch v. Maryland* when he wrote the decision for the Court invalidating a Maryland statute aimed at the Second Bank of the United States.²⁰ The power of Congress to incorporate or charter a bank was admitted not an express power, but was one reasonably implied from other express powers.

Marshall insisted that a "sound construction of the Constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are Constitutional."

In the same case, besides enunciating this vital doctrine of implied powers, Marshall also defined limits to the state's taxing power, to the advantage of the national government. The Maryland statute was invalidated because the tax involved constituted an interference with the functioning of a federal agency. As Marshall said, "The government of the United States, then, though limited in its powers, is supreme, and its laws, when made in pursuance of the Constitution, form the supreme law of the land, 'anything in the constitution or laws of any state, to the contrary notwithstanding.'"

These doctrines of the supremacy of national law, and of implied powers, have been prominent in the expansion of federal power. Where the express power does not exist in the Constitution, Congress has often sought to legislate through power it implies from one of the express powers. In this it has been favored often by court interpretation. Often too it has been restrained as an attempted usurpation of power residing in the states.

A few illustrations will serve to show the extent of the application of the doctrine of implied powers. Under the postal power the federal government

²⁰ 4 Wheat. 316.

censors literature, builds highways, and acts as a savings bank. Under the taxing power the federal government has sought to stamp out narcotics, to aid agriculture, and to regulate child labor. Under the commerce power the federal government has sought to regulate bus lines, wages, child labor, minimum hours, foods and drugs, and public safety.

Amendments Expanding Federal Power

The expansion of federal power at the expense of the states has occurred not only by Supreme Court interpretation of legislation and treaties. It has taken place also by way of amendments to the Constitution as secured by the people of the nation themselves.

The fourteenth amendment stipulates several restraints upon the states. The "due process of law" requirement for the states is comparable to the restriction of the fifth amendment for the federal government. In the same amendment the states are forbidden to abridge the privileges or immunities of citizens of the United States, or to deny to any person within their jurisdiction the equal protection of the laws.

The former phrase is intended to safeguard the citizen from state laws affecting privileges guaranteed him particularly in the first ten amendments. The second phrase is particularly significant in our modern industrial society since the Supreme Court has interpreted corporations to be "persons" within the meaning of the protection—a development which has aided corporations greatly in their growth and legal status.

The fifteenth amendment states that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude." Aimed particularly at some of the southern states, this guarantee in practice has been modified and limited somewhat by political party primary regulations, but it still acts as an enforceable restraint on state interference with the franchise.

The sixteenth amendment gives the national government the power "to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." This is a great, flexible power. It can be used as an important revenue device. It can be an effective means of redistribution of income, by taxing great wealth heavily.

The nineteenth amendment assures suffrage rights for women. While it operates likewise against the federal government, it has been most felt by state and local political machines.

Other Factors Aiding Expansion of Federal Power

Besides interpretations by the court and amendments by the people, the national government has been strengthened in other ways, particularly in coöperation with state enterprises themselves. Experiment stations, agri-

cultural colleges, roads, bridges, and many other activities of advantage to a community or a state have been financed in part by contributions from the national treasury and have had the assistance of skilled federal experts. In most instances the federal government attaches stipulations by way of labor and other standards which effectively give the national government considerable authority in the undertakings.

Social forces from the time of the Founding Fathers to the present day have further aided the increasing national supremacy. Some of these have already been suggested, surrounding as they do social and economic phases and effects of our modern industrial society.

It should again be emphasized that throughout this century and a half there have always been forceful defenders of a strong national government, with a consequent denial of the importance of the state as a quasi-sovereign unit. In fact, today many say that the state at best is a geographical convenience and even not always that. Some people assert that the social and economic problems of the country no longer coincide with state lines.

The influence of immigration and migration may be noted. The seeking of new frontiers by foreign and American migrants at various stages of our history weakened early localism and other geographical attachments. We drift across state borders in search of employment, recreation, and in business and professional pursuits more readily than the early peddler went from town to town in the county.

The development of the great national political parties has helped to amalgamate and centralize national sentiment. As we shall see, these parties have grown up outside of our Constitution and are now forceful factors in our government. At times the party is the government. National campaigns overshadow state and local contests. National issues often outshout more local ones. The office-holder, the political henchmen, the spoils-seeker all look hopefully to Washington, even while they may be concerned in local matters. The voter himself increasingly expects Washington "to do something about it."

Other chapters tell of the national scope and force of pressure groups and business enterprises. We are being welded, in structure and in psychology, into a nation, rather than a heterogeneous collection of localities, states, and even regions

Social Legislation

Social legislation is not new, but its widest spread has come in this century. Here especially the struggle between national supremacy and states' rights has been strong and even acrimonious. The states insist that legislation pertaining to the daily life of the citizens properly belongs to them, as residual power granted in the Constitution. They emphasize that such powers resided in them prior to the Constitutional Convention, and that

they surrendered only specified powers to the central government in the Constitution

Those championing social legislation, particularly of a national character, repeat the now familiar points of the states' inability or failure to cope with many contemporary social and economic problems. Moreover it is felt that many of these problems can now be best handled as national problems and by the whole nation through its national government.

The character of modern industrialization and contemporary family organization is such that the individual or the family alone can no longer effect adequate protection from the economic hazards of unemployment, sickness, old age, and in many instances even to provide food, clothing and shelter within a standard of minimum health and decency. Consequently, group action—largely through governmental frame work—has grown in America, even as it had in England and on the Continent a generation before.

Social legislation at the beginning of the century had largely to do with working conditions in factories. Various states led the way with workmen's compensation acts. Efforts by some states to introduce laws limiting the hours of labor met considerable resistance, especially from business men. It was viewed as a constitutional infringement of the right of contract not to permit a woman to work ten hours a day in a factory if she chose to—or had to. Likewise resistance to child labor legislation was forceful.

Many states did, however, pass progressive labor legislation pertaining to hours and conditions of labor. These laws were first with regard to women and children. Later such legislation was passed with regard to men in hazardous occupations. Finally some laws were broadened to include men in additional spheres of employment.

These state laws, however, lacked uniformity. Some states passed no or negligible legislation on such matters. Business men faced with competitive conditions in other areas found these regulations oppressive. As well, reformers felt pressure should be brought upon the less progressive states to bring their standards of employment up. Hence a demand that the federal government step in.

Child Labor

The national government had already won the approval of labor for its standards of employment among its own employees. Twice the national government sought to legislate with regard to child labor and each time the Supreme Court invalidated the statute. In one case the law was held unconstitutional on the ground that the tax, used as a medium, was a penalty and not merely a revenue raising device.²¹ In the second case the Court held that the federal power over interstate commerce did not extend

²¹ *Bailey v. Drexel Furniture Co.*, 259 U.S. 20 (1922)

to local production.²² Both were considered an unwarranted intrusion in the sphere of the states.

In the later invalidated N R A , the federal government tried again to make regulation of child labor a matter of national supremacy. The National Wages and Hours Act of 1938 is another attempt on the part of the national government to regulate child labor in many industries. This act, which has been called by Charles A. Beard the "most comprehensive law dealing with labor conditions ever passed by Congress," provides also standards of wages as well as hours for many important industries throughout the country. By a very broad interpretation of what constitutes interstate commerce and its ramifications, Congress has included many occupations which are local in character and which many would feel to be a direct violation of state jurisdiction.

Old Age Assistance

In the nineteenth century the economic problem of old age was left for solution to the individual or his family. If the individual was without livelihood or means, the burden fell upon immediate or remote members of the family. To accept support from the community or other agencies than insurance annuities was considered charity and pauperism. Then the individual and especially his family fell in the respect of the neighbors.

The economic hazard of old age is now coming to be regarded as a situation beyond the ability of the average individual or family to provide. Increasingly the result of our modern society, it is being accepted as a social problem. Here again the states led the way, since this too was considered their proper sphere of action.

These state laws have for the most part provided monthly sums in aid of the indigent. Frequently this was to displace the county poor farms and still carried the stigma of charity. Insurance companies, fraternal orders, and some unions have long had systems of annuities for those able to afford the annual cost. Some employees come under pension systems available in some corporations, municipalities, states, and the federal government. But a small percentage of the gainfully employed comes within these categories and the rest view with distaste state charity. So there has been agitation for a comprehensive system of old-age pension, operating as insurance and not benevolence.

The states have been reluctant to embark on as extensive a program of social insurance for old age. Again the federal government has taken the lead. To encourage states to establish old-age aid for the poor, the federal government in 1939 agreed to contribute up to \$20 a month in each individual case to states establishing systems appropriating a like amount. Whereas in 1934 only some twenty-eight states had such plans, by 1938

²² *Hammer v. Dagenhart*, 247 U.S. 251 (1918).

with the federal encouragement every state had arranged for such old-age aid.

In addition to this, the federal government is sponsoring a genuine old-age pension plan, as distinct from the aid described above. Contributions from employees and employers pooled in the national treasury are to result in pensions to the former when they become eligible and to an amount their classification entitles them to, as in the case of any private insurance annuity. In this way the federal government is directly admitting the problem as a national one requiring national leadership and organization.

Unemployment

Similarly the federal government is taking the lead in another modern hazard, unemployment. This economic problem was formerly left to the individual and his family for solution. Many unions and some corporations sought to solve the problem for their own workers. In the 'thirties it became clear that the problem had assumed the proportions of a major social crisis.

Efforts on the part of the federal government to meet the crisis of unemployment have been in three general categories. In the first place the national administration sought to make and provide work directly or even to give direct aid. Familiar to all are the many "alphabet" agencies involved in this phase. the Civil Works Administration, the Civilian Conservation Corps, the Works Progress Administration, Federal Emergency Relief Administration, Industrial Rehabilitation Act, Public Works Administration, National Youth Administration.

In the second place, the federal government has offered its services in finding a job and in employer-employee relations. Here we may note a network of employment agencies throughout the country under the supervision of the United States Employment Service, formerly in the Department of Labor, but transferred in 1939 to the Social Security Board under the Federal Security Agency. The laws and boards serving the cause of labor relations and conditions are many, among which should be mentioned the Wages and Hours Act, the now defunct N R A, the National Labor Relations Board, and the Norris-LaGuardia Anti-Injunction Act.

In the third place, the federal government has sought to encourage the states to inaugurate unemployment insurance plans. This it has done through taxes applicable to assistance for states whose unemployment insurance patterns meet federal standards. The state plans vary in coverage and adequacy in meeting the hazard, but the federal government seems to be bent upon gradually improving the machinery in nation-wide solution of a national problem.

Health Insurance

Another form of social insurance in which the national government appears interested and which likewise would encroach on the old domain of the states is in the field of health insurance. The national administration has spoken often of illness as a major cause of economic insecurity and of the need of action on a broad comprehensive scale.

Such action is still in the stage of debate and planning. The problems involved are numerous. The relation of the states and the federal government in such a plan would need to be worked out. The position of the medical profession with regard to socialized medicine must be determined. The nature of the benefits and the distribution of the costs must be agreed on. Herein certainly will be an opportunity for the student to consider many governmental, economic, and social problems, in connection with a solution of this hazard of the individual in our modern society.

In another chapter activities of the federal government in specific fields of health protection will be discussed. These have particularly to do with efforts to control the traffic in narcotics, including a group of federal farms for the care of those addicted. The federal Public Health Service engages in extensive research in diseases. It also maintains hospitals for lepers as well as free hospitalization for harbor workers, longshoremen, and sailors of the American merchant marine. The federal government seeks also to effect special regulation over the manufacture of serums, the eradication of "quack medicines," and extensive protection in the fields of drugs, cosmetics, and foods. In many of these can be seen evidences of the federal government expanding its power and functions for the welfare of specific groups as well as for the common good, within the express powers of the Constitution and the implied powers as interpreted by the courts.

CHAPTER 58

THE LEGISLATIVE PROCESS

Areas of Representation

The voting citizen helps to elect many representatives to frame the statutes and ordinances to which he is subject. For the most part, the basic principle of representation is geographical. The voter's representatives are chosen with regard to the areas they serve, rather than formally with regard to any other of the dominant interests that the citizens have in legislation. Herein we see especial reason for the growth of the multitude of pressure groups as the "invisible government" or the "third house" of the legislature or Congress.

These districts and areas of representation are numerous and varied in size, with the voter's residence as pivotal. With regard to his own town, he may vote for precinct commissioners and a board of selectmen. Or, if it is a city, he may vote for the councilman or alderman from his district or ward. These bodies pass ordinances that are the laws of the special communities. The commissioners of his county he will help too to choose; they will have some rule-making power amounting to legislation.

He may be privileged to vote for one or several geographical representatives to the lower house of his state legislature, depending upon whether he lives in a single-member district or whether he may vote for the number the municipality is entitled to. He likewise lives in a state senatorial district and may vote for a representative, therefore, to the upper house of the state legislature.

This same citizen may of course vote for a representative to the lower house of the national Congress from the federal district in which he lives, and for as many Congressmen-at-large as his state may have. He is privileged to vote for two United States Senators to represent him and his state in the upper house of the national Congress. The voter therefore votes for at least seven legislative agents from at least six geographical areas embracing his home, and this by no means includes all the possibilities of consideration.

In the lower house of Congress and of many state legislatures, a unit of population determines the geographical size of the district of representation. In Congress, for example, a state will have as many of the 435 members of the lower house as the state's population is, roughly, times 280,000, which is the approximate unit, with the notable exception that by the Constitution no state may have fewer than one representative.

In many states, however, consideration is given to the unit of government, so that each town, for example, may have at least one representative in the lower house of the state legislature. That will serve to explain why a state with as slight population as New Hampshire may have nearly as many in its lower house as the entire membership of the House of Representatives of the national Congress.

The Bicameral Form

There is, perhaps, more reason for the traditional bicameral form of legislature in the national body than in the states. Our federalism calls for a preservation of the states as equal entities. The Senate, composed of two senators from each state regardless of its size in area or population, effects that. Our democratic form of government calls for as full and as direct a representation of the people of the nation as possible. The 435 congressional districts, constructed on a population basis, provide this.

The founding fathers feared a too strong, centralized, quasi-absentee rule. Federalism, with this emphasis upon the identity and powers of the states, safeguards this. They also feared another tyranny, that of irresponsible masses, which full-fledged democracy might bring. This they guarded against by giving coordinate legislative powers to a smaller, upper body then chosen by state legislatures more easily controlled by the propertied, as well as by inculcating in the Constitution the basic protections for private property.

It is agreed too that a bicameral legislature creates a check and balance such as to restrain hasty, ill-advised legislation. But a conservative will assert that the doctrine of judicial review is a more effective protection of this, particularly if both houses are overwhelmingly of the one party and the chief executive, of that party, is a strong-willed leader.

From time to time reorganization of the composition of Congress and state legislatures has been proposed, but for the most part has not got beyond the stage of theorizing. Some have proposed a single compact chamber, but the resistance to such a proposal would be considerable. As a reform of state organization, this is especially feasible, particularly in terms of efficiency of lawmaking and of cost. Nebraska is the only modern state thus far to have tried this step, although three of the states employed the form over a century ago.

Others would preserve the two houses of Congress, but they would have one composed of representatives of geographical units and the other made up of representatives chosen proportionately in order to give formal recognition to the economic, social, and minority political groups in the country.

A modification of this last viewpoint, to incorporate the great pressure groups into our machinery of government, is to create such a third house, added to the two present ones. This third house some would give consider-

able power, while others would have it serve only in an advisory capacity to Congress.

Most legislatures meet every two years, for sessions ranging from one to six months. The Congress meets every January for a session usually lasting into June. Extra sessions may be called in either case. United States Senators are elected for six-year terms, approximately a third of the Senate being elected at each biennial congressional election. Representatives in Congress are elected for two-year terms. The range of terms for state senators is from two to four years. The members of the lower houses of state legislatures are elected for terms of one to four years; a two-year term is the most common practice.

The Party Caucus

Before Congress convenes, the chieftains of each party usually meet separately to confer on party plans for the session. After the arrival of the Congressmen in Washington for the opening of Congress, a party caucus is held, in which the members of the party go into a "huddle." At this time, the leaders of the party may have matters well enough in hand to secure harmonious agreement readily on party organization for the session.

The immediate organizational interest of each party caucus of the House is with regard to the designation of the members to be Speaker of the House, Floor Leader, Whips, and members and chairmen of the various committees of the House. These are determined by seniority, prestige, pressure of the leaders, or by compromise where the party caucus is split by rival groups.

The caucus choice for Speaker will presumably be the Speaker of the last session, if he is of that party and has been returned by his district. If this party was the minority party during the last session, the minority floor leader of the previous session will be the party's outstanding candidate for the post, although there may be contestants within the party for that honor.

Within the party, the next ranking member of prestige and power is the floor leader. Membership and chairmanship of the committees will be allotted according to the legislative importance of the committee and the prestige and seniority of the members in party circles.

In theory the Speaker and the committeemen and chairmen are chosen by the House in open meeting. But the practical difficulties of this procedure in a body of this size are apparent. Moreover, since action is by a majority vote and since usually one of the parties will have a clear majority, nominations would tend to assume some orderly pattern.

So, with the agreements established in each caucus, the distribution of assignments proceeds smoothly on the floor of the House. The majority party naturally, by weight of its position, secures the Speakership and the

chairmanships of committees. It also receives a majority of membership on the several committees. The minority party retains minority membership on the committees, varying in ratio by tradition or agreement with the other party.

In the meantime, somewhat similar organization is taking place in the Senate, with certain significant differences. The presiding officer of the Senate is not called Speaker, but President. The Constitution designates the Vice President of the United States as President of the Senate. However, under the Constitution, the Senate does choose a President pro tempore to serve in the absence of the Vice President.

Although many Representatives serve on the same committees throughout many consecutive terms, committee membership in the Senate is more stabilized, for two reasons. The senatorial term is longer and the senate organization is more continuous, since ordinarily only one-third of the Senate is affected by each congressional election. Moreover, Senators are more often reelected than Representatives.

The President of the Senate is seldom a person of power, in party politics or in lawmaking. He is not of the elect or elected body of Senators. He does not have a vote, except in the event of a tie. Even though he will ascend to the presidency if the President should die or be removed from office, he is rarely chosen by the national convention because of potential presidential caliber.

Chosen to console or flatter an area or wing of the party, the Vice President has often fallen back in office into the relative obscurity from which the campaign may have briefly lifted him. Some reason that to accept the Vice Presidency is to commit political suicide.

But in the contemporary example of Mr. Garner, at least prior to the campaign of 1940, we have evidence of a Vice President who is to be reckoned with as a national figure in his own right and a continuing power in party circles. This may be in part explained by his natural capacity for leadership, by his prestige in a wing of the party opposed to that led by President Roosevelt, and by his long, able career in the lower house, particularly as its Speaker.

Power of the Speaker

For the Speaker of the House is more than a personage; he is a power. In manipulation of his powers and in his strategic position in party circles, a strong Speaker is next to the President in power of action and leadership. He may, and some on occasion have done so, oppose presidential will in legislation successfully.

The Rules of the House of Representatives set forth in detail his official powers. After calling the members to order, he shall, "on the appearance of a quorum, cause the Journal of the proceedings of the last day's sitting to be read, having previously examined and approved the same."

It is the Speaker's duty to "preserve order and decorum, and, in case of disturbance or disorderly conduct in the galleries, or in the lobby, . . . cause the same to be cleared." He has the "general control . . . of the Hall of the House, and of the corridors and passages and the disposal of the unappropriated rooms in that part of the Capitol assigned to the use of the House . . ."

It is likewise his duty to "sign all acts, addresses, joint resolutions, writs, warrants, and subpoenas of, or issued by order of, the House, and decide all questions of order . . ." He puts the question, and if in doubt as to the number of those saying "aye" and those saying "no," he may call for a rising vote, or for a vote by tellers whom he names.

The Speaker has the right to name any member to perform the duties of the chair. And he appoints "all select and conference committees which shall be ordered by the House from time to time." A member must be recognized by the Speaker before he can address the House, and when "two or more Members rise at once, the Speaker shall name the Member who is first to speak . . ." Furthermore, while "the Speaker is putting a question or addressing the House no Member shall walk out of or across the Hall . . ."

Two of his other powers may be observed. For purposes of a quorum, he may have noted and recorded in the Journal sufficient names of those present and who have not answered, in order to constitute a quorum and enable the House to do business. Likewise his power to refuse to put motions which he considers dilatory similarly expedites business and increases his directions of the legislative action.

The Committee System

Besides the special committees that may be appointed from time to time, the House has over forty standing committees. The Senate has over thirty standing committees. Many of these are concerned with matters of relatively minor, routine character. The former power of the Speaker to appoint all the members of all the standing House committees will be recognized as a power indeed. In this way he could control legislation and "purge" recalcitrant Congressmen more than even a President could hope to. However, in the rebellion of 1909-1911 by Congress, particularly against the tyranny of Speaker "Joe" Cannon, this power was shorn from the office, in an effort to make the organizational activities of the House more democratic.

High in importance among the House committees is the Rules Committee. This powerful committee may make rules pertaining to the order of consideration of legislation, the limitation of debate, and other matters that may be crucial in the history of a bill. It has immediate access to the floor of the House at any stage. It may, as it has been known to, submit a

bill of its own to the House as a surprise move and without reference of the bill to any other committee.

The Ways and Means Committee of the House passes on revenue bills. Bills calling for appropriations are first reviewed by the Appropriations Committee. Other House committees of major importance are those on interstate and foreign commerce, labor, banking and currency, judiciary, public lands, agriculture, rivers and harbors, naval affairs, and military affairs.

In the Senate there is also a committee on appropriations and one, the Finance Committee, on ways and means. The Judiciary Committee is especially important, since it first passes on presidential nominations to the federal courts, along with other judicial matters. Likewise the committee on foreign relations has especial and important duties pertinent to the Senate's power of confirmation of presidential action in foreign affairs.

Legislative History of a Bill

Let us presume that a prominent organization has asked the congressional representative from that district to sponsor a bill which it has drawn up. This he will no doubt be glad to do, for it is one of the distinct services he can render that wins favor if not favors.

Any Congressman may submit as many bills as he wishes. In some instances these bills may be of his own creation, having to do with measures he considers especially desirable for his constituency or for the nation at large, this will be particularly true of bills resulting from his campaign promises. Or, the bills may originate from persons or groups within his district. Too, any other person or group may enlist his support, particularly if their own Congressman does not choose to endorse the measure or would not be the most vigorous champion of it. This stage is only one of the many at which pressures are exerted strenuously on the lawmaker.

The bill first will be printed, read by title only, and then referred to an appropriate committee for consideration. This committee may tender it to one of its sub-committees for detailed examination. It is at public hearings held by the committee that the proponents and antagonists of the bill will particularly train their guns, either to gain committee approval or disapproval of the measure.

If the committee fails to approve the measure, the bill's course ends there, unless it is subsequently revived and re-introduced as a new measure. The committee system is vital in expediting the work of Congress, by sifting the bills for the Houses. "Ordinarily, from twenty to fifty thousand bills of every description are presented to a Congress"¹

If the committee reports the bill favorably to the House, it is then

¹ J. S. Young, J. W. Manning, J. I. Arnold, *Government of the American People* (D. C. Heath and Co., Boston, 1940), p. 188

placed on the legislative calendar. When the bill's turn on the calendar is reached, the measure then receives its "second reading," this time in full. It is at this stage that the debate on the floor takes place and amendments may be offered. Because of the size of the House membership, debate is necessarily limited, usually to one hour for each member, with additional time for the sponsor.

Then the bill receives its third reading, usually by title only, and with little or no debate. It is at this point that the House votes on the bill. If the majority of those present vote against the bill, the measure is "killed" and its progress ends. If, however, a majority votes for the bill, it is then said to "pass," and it is sent to the Senate, where it goes through a comparable procedure.

The bill may be killed in the Senate at any one of the points mentioned. The debate here may be longer and more vigorous than in the House. The Senate is a smaller body and is composed of a group more experienced in lawmaking. It is vastly proud of its label as the world's most famous deliberative body.

If the Senate alters the bill, as is likely, then a conference committee will be appointed from the two houses, to iron out the differences. This compromise both houses will act upon.

The bill, when passed in identical form by both houses, must be signed by the Speaker of the House and the President of the Senate. It then goes to a committee on enrolled bills which has it put in the proper format of an official document. This done, it goes to the President of the United States, who of course may veto it.

If he signs it, it then becomes a law, and is sent to the Department of State, where it is placed in its archives and published among the Statutes of the United States. If the President does not sign the bill within ten days, it becomes a law without his signature, unless in the meantime Congress has adjourned, in which case it does not become a law. This last is called a "pocket veto" and may be utilized by a President who for various reasons does not wish to go on record as vetoing the measure. A bill vetoed by the President may be passed over his veto by a two-thirds vote of Congress and becomes a law without his signature.

It should be noted that a bill may originate in either house, or it may be introduced simultaneously in both houses, with a member of each sponsoring it, of course. Fiscal measures are supposed to originate in the lower house.

In the state legislatures, the progress of a bill is similar. Likewise the governor has power of veto, which may be overruled by a sufficient majority of the legislators. The character and craftsmanship of state statutes are often inferior to the laws of Congress. This is in part due to the caliber of the lawmakers. Also, the experience of congressmen in legislation is greater. Moreover, details of congressional bills are given far more publicity and

are subject to the astute criticism of interested persons and pressure groups, both in committee hearings and relayed to specific congressmen.

Legislative Problems of Form

In recent years, legislative measures have improved in form in some states as result of the assistance of drafting bureaus. These vary in pattern, from advisory to official bodies. Here the legislator may secure technical criticism of the form of the bill he is proposing. In some instances he may give the bureau an outline or the gist of the measure and the bureau will draw the bill up in detail for him.

Even though the proposed measure may be a desirable one, there are three obstacles to its excellence as an enforceable statute. One has to do with technical form. A bill hastily or poorly drawn may become invalid or inert due to various defects. It may fail to specify the enforcement agency. It may neglect to provide any or adequate appropriations for the carrying out of the measure. It may not have been properly enrolled or signed, although these defects are usually correctible. These and many other defects in form a competent drafting bureau may catch.

Another obstacle in sound lawmaking has to do with phraseology. This is particularly important where the discretionary action of administrative agents may be concerned, as well as reflected in the burden of judicial review.

If a measure is specific in too elaborate detail, then the statute may not be adequately flexible in administration. Moreover, it may be appropriate for the needs of the moment, but slightly changing conditions in the future may turn an effective law into a poor one, if its blue-print is fixed in minute detail particularly with regard to current aspects of the problem concerned.

To avoid a law becoming "dated" and too restrictive in operation, there is a tendency to use general and broad phrases, often hardly more than a statement of policy which the administration is to determine and apply in the light of conditions at the moment. It is in the elaboration of the legislative policy that the chief executive will find especial occasion to use his power of issuing ordinances and executive orders.

A law pronouncing a general or broad policy, with details to be evolved by the executive, will frequently be the type established where the measure is a highly controversial one. In such a case, to get the bill passed at all, its exponents may have to agree upon a phrasing which will offend no considerable group. Such phraseology may mean all things to all people. It makes, of course, for difficulties of administrative policy and execution, for then the executive is bearing the brunt of divided public opinion as to such a law and its operation.

Such a situation also may make for considerable litigation by those wishing the law to be clarified or who differ materially in its interpretation.

This gives an opportunity for judicial review, resulting in judicial supremacy in legislation, for that law then becomes what the highest court has said it is, until reversed by a later court, or redrafted and reenacted by a later legislative body.

A third hurdle that lawmaking must pass is that of constitutionality. A statute may be judged unconstitutional for either of two general reasons. It may be seriously defective in technical or legal form, as where the enacting clause has been omitted. It may be held invalid in substance, in dealing with matters or conferring powers not within the constitutional authority of the lawmaking body.

Initiative and Referendum

Before looking at the authorized powers of Congress and the state legislatures, two adjunct forms of the legislative process should be mentioned. These are types of direct legislation known as the initiative and referendum.

Both are methods of effecting state laws or municipal ordinances by popular action. In the first, a petition is circulated by interested voters calling for the placing of a particular question on the election ballot. If this petition is signed by the number of voters required by law, then the electorate is given an opportunity to vote for or against the measure at a regular or special election. Here the voters take the "initiative" in legislating directly.

As its name likewise suggests, the referendum is a referring to the voters at the polls, of an enactment of their legislative representatives. Here too a sufficient petition may cause to be placed on the ballot the question of approval of a statute or ordinance, this approval being necessary under the circumstances before it becomes enforceable.

Some years ago these two forms of popular legislation were championed for various democratic reasons. It was felt that it would keep the people's lawmakers more alert in the performance of their high duty. It would make the voter himself feel more a part of the process of government and stimulate him to keener civic knowledge, interest, and participation.

But many now feel that the lofty purposes of the patterns have not worked out as hoped. They say that the lawmakers are now able to pass the burden of decision on to the voters, or to leave it to them, especially on topics on which legislators may not care to declare themselves, for partisan and other reasons.

Unfriendly critics further allege that both forms operate for the particular advantage of strong interest and pressure groups that can take advantage of the voters' indolence and ignorance. It has been previously remarked that it adds to the voters' burden at the polls, and is even given as a contributing reason for the voters' apathy. The inability or lack of inclination of the voter to cope with the fundamental issues involved may

lead to guesswork on his part, or, as often, the leaving of the questions unmarked.

Finally, as indicated above, the resolving of an issue to a single, simple form, clear to all, and acceptable to most, is one of the most difficult phases of lawmaking. The voter may agree heartily with the substance and yet disagree with the scope or a detail. Yet he must either accept in full or reject in full, for unlike his legislators he has no power or opportunity to persuade the adoption of qualifying and modifying amendments to the measure.

Legislative Powers and Limitations

It is not enough for the Congress or a state legislature to draft a measure which is desired by the people, whether or not wise, or that is drawn up with able craftsmanship. It must likewise be constitutional in substance, as well as in form. It must deal with legislative powers the body constitutionally possesses.

The opposition may bitterly assail the constitutionality of a measure, in the committee hearings, in the legislative chambers, in the press, over the radio. Nevertheless, a statute duly enacted is deemed constitutional until the courts have nullified it. For the lawmakers are presumed to be intending to act only within their constitutional powers. And, as previously described, judicial review of the constitutionality of a statute may only occur when such a question arises as part of a case properly appearing before a court of sufficient jurisdiction.

The Constitution imposes certain specific restraints upon the powers of the people's lawmakers. A democratic note is struck in the prohibition against granting any title of nobility. To prevent discrimination and to aid commerce, the lawmakers are forbidden to lay any tax or duty on exports. No state can enter into a treaty or coin money, because these are sovereign powers. The constitutional restrictions upon both the state legislatures and the national Congress involving the civil liberties are discussed in another chapter.

The powers of Congress are those expressly granted to it in the Constitution or reasonably implied in the execution of its express powers. Constitutionally all other powers reside in the states, except those denied to the states. Under federalism and the expansion of federal power have already been outlined instances of modern conflicts in jurisdiction in legislation between the states and the national government.

(1) *The Taxing Power.*—Clearly one of the most important subjects of legislation in national, state, and local governments is that of taxation. This power is necessary in order to raise revenue for the expenditures of the government concerned. Under certain circumstances it may be used to protect and foster industry or even as a means of exercising police power.

There are limitations on the character and scope of the taxing power of

Congress. Some of these have already been referred to. As we have seen, the Supreme Court in the Child Labor Case declared unconstitutional a tax that amounted to a penalty and that involved a regulation by the federal government in a sphere of the states. And yet we have also seen that Congress has been permitted to use the taxing power as a form of police regulation in the cases of narcotics and oleomargarine.

Protective tariffs are further evidence that a tax may be imposed for regulation or to restrain, since here the government is taking a step which will deprive itself of revenue, rather than produce it. Protective tariffs may well come within the power of Congress to regulate foreign commerce. It may be noted in passing that the Supreme Court views more kindly a use of the taxing power to regulate where Congress may so regulate under another of its powers.

We have also seen that Congress may not levy taxes on exports. This was a concession of our Founding Fathers to the southern and such other states who were peculiarly dependent upon exports in the colonial period.

In invalidating the A A A. of 1933 in 1936, the Supreme Court reiterated the doctrine that the general welfare clause of the Constitution is a limitation upon Congress rather than an extension of its power.² The power to tax for the general welfare may be taken as for the common good and not for a special portion of the population. It is customarily stated in constitutions that taxes must be for public purposes. In practical fact, this is still a knotty problem, since various taxes bringing revenue into the Treasury may be more of a burden on some groups than others, and the latter may benefit more directly from specific appropriations and expenditures by the Treasury than the former.

A further constitutional limitation is that all direct taxes must be apportioned among the states according to population. Such taxes, as real estate and poll taxes, are to be found in state and municipal finance, but have been seldom used by the national government. The controversy as to whether an income tax is an indirect or direct tax extended from the Civil War until the sixteenth amendment, proposed by Congress in 1909 and formerly ratified in 1913, declared the power of Congress "to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration."

Indirect taxes must be uniform throughout the United States. These taxes are the various duties, imposts, and excises that furnish such a considerable portion of the total revenue of the national treasury. In whatever part of the country one purchases the commodity so taxed, the amount of the tax for the unit purchased will be the same. There may, of course, be a state tax on that commodity added to the price, as in the case of cigarettes

² *US v Butler*, 297 U.S. 1 (1936)

in some states. There may even be a municipal tax on top of both, as in the case of a city sales tax, but that does not violate the element of uniformity so far as the federal tax is concerned.

The Supreme Court has held that an instrumentality of government may not be taxed. This applies reciprocally for both state and federal instrumentalities. In 1819 the Court held that a tax by Maryland affecting the Baltimore branch of the Bank of the United States, a federal bank, was unconstitutional as a menace to the independence of operation, if not indeed the life, of an instrumentality of the federal government.³

In 1869 the Court upheld a federal tax that "destroyed" state bank notes, although this was defensible under the express power of Congress over coinage and its resulting powers over money and banking.⁴ In 1871 the Court upheld the action of a Massachusetts probate judge that a federal income tax applicable to his salary was unconstitutional, since the state courts were instrumentalities of the state government.⁵

But in 1939 the Court upheld the position of the state of New York in its attempt to tax the salary of an attorney attached to one of the federal "alphabet agencies." The Court in its opinion reversed its long-established doctrine of the reciprocal immunity of salaries of one government from taxation by the other.⁶

(2) *The Commerce Power.*—As we have seen in other connections, no power of Congress has in modern times caused more controversy and induced greater expansion of federal power at the expense of the states than the commerce power. Through court interpretations this power of Congress to "regulate Commerce with foreign nations, and among the several States, and with the Indian tribes" has been tortuously extended to permit the federal government to legislate pertaining to many matters formerly held to be within the exclusive province of the states.

In one of the child labor cases we saw that the Court guards carefully the interpretation of what constitutes commerce within the meaning of the clause. The Court in this case stated that goods harmless in themselves were not subject to regulation by the federal government as they entered interstate commerce. Even as late as 1936 the Court held that production is local and such regulation the affair of the states, even if the plight of a whole industry, such as bituminous coal, were concerned.⁷

Activities intra-state in immediate character, such as manufacturing, have long been held by the Court to be outside of the jurisdiction of the federal commerce power. As we have seen, industry has become so vast, so interrelated, and the economic and social ramifications and effects so

³ *McCulloch v. Maryland*, 4 Wheat. 316.

⁴ *Veazie Bank v. Fenno*, 8 Wall 533.

⁵ *Collector v. Day*, 11 Wall 113.

⁶ *Graves v. New York, ex rel. O'Keefe*, 306 U.S. 466.

⁷ *Carter v. Carter Coal Co.*, 298 U.S. 238.

broad and sharp, many have been impatient with this literal position of the Court

The modern effect of a huge strike in a great plant upon interstate commerce itself as well as upon economic groups removed from the scene of the labor disturbance has made many feel that even labor regulation was now a proper subject for national legislation, despite its age-long character as a state prerogative. In 1937, in a series of significant cases the Court swung around to this viewpoint, in upholding actions of the National Labor Relations Board.⁸ In other aspects of labor legislation we have already seen Congress extending its regulation, under an expanding concept of the commerce power.

The problem of interpretation has not only been as to the specific point at which interstate commerce began and at what point it ceased, with relation to state jurisdiction and control. But it has also been with regard to the degree with which interstate commerce may be affected by local action, such that federal jurisdiction may enter. These two problems are to be found particularly in the functioning of two federal agencies, the N L R B. with regard to labor and industrial relations, and the I. C. C. with regard to railroad rates.

There is a problem also as to the subjects of interstate commerce. With regard to this too there is insufficient judicial clarity. Lottery tickets carried across state lines and the activities of a correspondence school have been held to be interstate commerce, but the far-flung, nation-wide insurance business has not so been considered and therefore does not come within the regulation of the national government under the commerce power.

(3) *The Postal Power*—Elsewhere mention is made of the varied, extended exercise of the postal power by Congress. Under it Congress has established an elaborate system of postal services that includes delivery to the door of the residence mail and parcels of varying classifications as to priority of despatch and as to guaranteed insurance and as to cost. The service includes land, water, and air routes.

Government bonds may be purchased at post offices. Domestic and international money orders may be sent. Savings may be deposited there as at a bank. Commerce is facilitated by the conveyance of merchandise "C. O. D."

Shipping interests, airlines, roads and highways have been subsidized by activities of the Post Office Department under appropriations from Congress. Likewise, through the postal power of Congress, this Department exercises censorship of the use of the mail. Fraud, obscene literature, and other offenses of the law and customary morality come within its scope, when the mail is used.

⁸ Cf., especially, *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1

(4) *Other Powers.*—Implicit in the clauses in the Constitution giving Congress the power to borrow money, coin money, regulate the value of money, punish counterfeiting—as well as prohibiting the states from coining money and emitting bills of credit—is the vast, resulting power of the Congress to legislate with regard to money and banking. Such can be illustrated by the extensive operations of the Reconstruction Finance Corporation and the Federal Reserve System described elsewhere.

The power of Congress to fix weights and measures may be illustrated in the activities of the Bureau of Standards, as discussed in another chapter.

The power of Congress “to promote the progress of science and the useful arts” by granting patents and copyrights is an obviously important one in our modern society. The congressional statute providing for the registration of trademarks is no less important to some business houses, this law was passed under the commerce power.

Congress has the power to declare war. Its powers of legislation for all matters pertaining to the national defense are comprehensive. The Senate must ratify any treaty a President seeks to make, resulting from war or any other international situation involving the United States. But in war-time, vast emergency powers are delegated to the President, with the effect that the war power becomes in practical fact one essentially wielded by the administration.

The power of Congress to admit new states into the Union will again come to the fore in connection with the Territory of Hawaii. The islands have sought statehood for many decades. In recent years a joint Congressional committee visited the islands and recommended a plebiscite. At the plebiscite on November 5, 1940, the islands favored statehood by a two-to-one vote. If a petition from the Territory should be granted by the Congress of the United States, the next step would be an enabling act by Congress sanctioning the drafting of a State Constitution. If this constitution is accepted by the Territory and approved by Congress, then a Congressional resolution would alone be necessary to admit Hawaii into the Union as the forty-ninth state.

Judicial Power of Investigation

In modern times one of the most publicized powers of Congress is its judicial power of investigation. This is ostensibly the power of either house, or both, to conduct investigations on matters pertaining to subjects on which it is empowered to legislate, if it chooses, or upon which it has legislated. It will be apparent that that may include an endless list of topics, in fact almost every item in this huge text.

The Congress has not “investigated” all those subjects yet, but it has many of them. The special committees and agencies appointed for that purpose since the adoption of the Constitution number over three hundred, of which half have been proposed during the first administration of Franklin

D Roosevelt. Un-American activities, munitions plots, monopolies, the stock market these investigations in particular have received such notoriety that in some years the "man of the hour" is the one whose name is identified with the particular investigation then most active.

These investigations can be valuable. From the hearings and the accumulated data, the Congress can not only have a sounding board of public opinion on a topic of legislative concern but also provide itself with detailed information as to the need of legislation on the subject. Sounder legislation could and should result.

A series of Supreme Court decisions has affirmed this power. The power extends, by judicial opinion, to the issuance of a subpoena requiring the attendance of a private person to testify before such a committee. For his failure to do so, the Court has upheld the power of Congress to punish for contempt.⁹ However, the Court has refused to uphold this power of compulsion in circumstances where it was manifest that the legislative function of Congress was not involved.¹⁰ The capacity for injurious abuse in this power of congressional investigation is considerable, even though it offers a striking contemporary illustration of an opportunity for articulate expression in a democracy.

Federalism Declining?

Throughout these chapters on government are evidences of contemporary trends of federalism. As Professor McBain called it, our Constitution is a "Living Constitution." The forces keeping it alive are stronger than ever before. The forces, economic, social, and political, that are pressing for a continuously expanding federal power are greater than those that would preserve the traditional autonomy of the states. Congress continues to stretch its specifically granted powers. The President, by his own action and by request for legislation, has given organization on a national scale to problems no longer local. The Court has shortened some of its cultural lag and has endorsed an expansion of federal power unknown to the nineteenth century. Intergovernmental relations are accentuated, even by the states themselves. The need of governmental reorganization presages the growing importance of the national government.

⁹ *McGrain v. Daugherty*, 273 U.S. 135 (1927).

¹⁰ *Kilbourn v. Thompson*, 103 U.S. 168 (1881), *Marshall v. Jordan*, 243 U.S. 521 (1917).

CHAPTER 59

RELATIONS BETWEEN GOVERNMENTS

National Police Power

The federal government exercises a national police power. Many challenge the existence of such a power. It is not mentioned in the Constitution. Furthermore, it is true that the protection of the morals, safety, and public health is the special residual authority of the state. Bills seeking to give the federal government social control over individual conduct are sturdily resisted, particularly as a violation of states' rights, and as exceeding the express powers of Congress.

Despite these challenges and an occasional setback by the interpretations and decisions of the Supreme Court, the federal government in the last hundred years has been gradually invading the domain of the states in passing laws pertaining to morals, safety, public health, and the general welfare. In some instances this action takes place because state laws are lacking or inadequate. In other cases it is a further reflection of the widening spheres of business and social contacts, due in part to developments in transportation and communication.

Since the federal government does not have express power in this field belonging dominantly to the states, it may exercise the power constitutionally only as an implied power, derived from one of its express powers. The express powers most often invoked in wielding a national police power are three.

The first is the commerce clause, or commerce power. This is the power given in the Constitution to Congress to "regulate commerce with foreign nations, and among the several states, and with the Indian tribes." The second is the taxing power. This is the power of Congress to levy and collect taxes, imposts, duties, and excises. The third is the postal power, which specifies the power of Congress to "establish post-offices and post-roads."

While these have been most used, other express powers give adequate base for regulatory laws expanding the federal police power. Such additional powers granted to Congress in the Constitution may be briefly cited as follows: to borrow money; to establish bankruptcy laws; to coin money; to punish counterfeiting; to pass copyright and patent laws; the war power; and to "make all laws which shall be necessary and proper for carrying into execution the foregoing powers."

Perhaps no subject more completely illustrates the thwarted efforts of

Congress to exercise a police power than that of child labor. Particularly since the turn of the century pressures have been brought upon Congress to effect uniform legislation restricting child labor. The laws of the states ranged broadly, from little or no restraint upon the exploitation of children, to socially commendable laws giving this group of labor especial protection. The prospect of uniform legislation adopted by the states was hopeless. Subsequent efforts to persuade sufficient states to adopt an amendment giving Congress this regulatory power have further demonstrated the strongly diverse opinions on this subject.

On one occasion, as we have seen, Congress sought to prohibit interstate transportation of commodities in the manufacture of which child labor had been used. But the Supreme Court invalidated the act, holding that implied power under the commerce clause did not maintain to prohibit in interstate commerce goods that were harmless in themselves and which were made locally. This was an unwarranted interference with the states' superiority in the regulation of production. On February 3, 1941, the Court, in unanimously upholding the Federal Wage and Hour Law, specifically overruled this famous five-to-four decision of 1918, *Hammer v. Dagenhart*.

On another occasion, previously mentioned, Congress sought to gain the authority through the taxing power. Employers in particular industries who employed children were subjected to a tax of 10% on the net profits for the year. The court likewise invalidated this statute, holding that this was not a revenue tax, or a tax on a commodity, but actually a penalty for such production. The Court viewed with alarm this broadening of the taxing power and the potentialities of control over business that such a device would mean.

The Court, however, has been more receptive to taxes levied by Congress to penalize or prohibit articles considered harmful or where organized pressures in favor of such production are not stronger than the public sentiment against them. Discriminatory, if not destructive, taxes by Congress have been upheld by the Court in the cases of narcotics¹ and oleomargarine.² If "Congress is circumspect enough in laying a tax to conceal its regulatory or destructive purposes beneath the form and language of a statute which appears to raise revenue, the Court . . . will hold the act valid. Thus . . . the Court upheld the National Firearms Act of 1934 which not only imposed a \$200 annual license tax on dealers in firearms, but also laid a tax of \$200 on each transfer of a machine gun, sawed-off shotgun, and silencer. 'On its face,' said the Court, 'it is only a taxing measure.'"³

Other measures constituting a national police power supervising phases

¹ *U.S. v. Doremus*, 249 U.S. 86 (1919)

² *McCray v. U.S.*, 195 U.S. 27 (1904)

³ Robert E. Cushman, *Leading Constitutional Decisions*, 7th edition (F. S. Crofts & Co., New York, 1940), p. 334

of the public health and safety have been held constitutional by the Supreme Court, as not violating due process of law or not extending unduly an express power of Congress. Within this category come such regulatory acts as the federal quarantine laws, federal meat inspection laws, federal pure food and drug acts, the safety appliance act, the narcotics control act, and the federal game act

For more than a hundred years the federal government has legislated with regard to public morals. Herein its implied police power has been upheld under the postal, tax, and commerce powers. In this field Congress has restricted or prohibited the transportation of obscene literature, lottery tickets, "white slaves," intoxicating liquor, prize-fight films, and packages of cigarettes with premium coupons or obscene pictures enclosed.

The federal government takes stern steps of its own with regard to many criminal acts, especially where the states alone have been handicapped to reach the offender. The Motor Vehicle Theft Act makes it a federal crime to transport a stolen car across a state line. If one uses the radio, telephone, or telegraph as a device for extortion, he may find himself brought before a federal court.

Most are familiar with the "Lindbergh Law," one of a series of federal statutes giving the federal government police power in kidnapping and certain other crimes against the person, as set forth in the Six Federal Crime Control Acts of 1934. These are particularly indicative that even crime has ceased to be local. Modern high-speed cars and planes take the criminal swiftly from the scene and even the state of the crime. Even when apprehended, difficulties in way of extradition proved to his advantage and federal action was increasingly demanded.

Use of the mails in the sending of obscene literature or pictures constitutes a federal offense. Likewise frauds, swindles, or extortion by mail come within the police power of the federal government. Fraud in grading grain or apples is subject to federal action. Stolen goods, to an amount over five thousand dollars, come within federal jurisdiction as soon as they cross a state line.

Without protracting the list further, these illustrations will demonstrate the existence of a national police power growing in many directions. Some would go so far as to amend the Constitution, giving the federal government general widespread power to regulate in the interests of public safety, morals, health, and welfare. So long as many of the restraints upon the individual in the social interest can be adequately adjusted to local requirements by municipalities and by states, the resistance to such centralization will be overwhelming.

Only in instances where the forces of law and order of the states and their subdivisions fail or are unable to cope with a situation sufficiently widespread and concerning which public opinion is aroused will the federal government be encouraged to assume the burden. With the recent expansion

by the court of the concept of the commerce power to include federal regulation under certain circumstances, even at the stage of production, hitherto considered to be merely a local matter and therefore not within the congressional power to legislate, exercise of a national police power through the commerce power may well be likewise widened to extend to other provinces of the state.⁴

Federal Enforcement Agencies

The federal agencies in charge of the enforcement of these various laws are numerous. Some of them may be briefly indicated. The most publicized in recent times is the Federal Bureau of Investigation, a branch of the Department of Justice. Every schoolboy has read or heard of the exploits of the "G-Men," America's "Scotland Yard," in their pursuit of malefactors. The F.B.I. works in conjunction with other law enforcement offices of the federal government, together with state and local police, in ferreting out criminals coming under federal law.

The network of the Department of Justice itself is spread throughout the nation. Its function is the enforcement of all federal laws. Its head is a cabinet officer, the Attorney General, appointed by the President.

The Customs Service, together with the Coast Guard, has the task of preventing the smuggling of goods into the United States. Unlawful entry of aliens is within the policing of the Department of Labor. The Secret Service of the Treasury Department is a highly organized special police body, on especial lookout for counterfeiters.

The Division of Internal Revenue, whose job it is to collect the taxes, ferrets out fraudulent returns on tobacco, liquor, income, and other taxes. A corps of inspectors of the Post Office Department pursue those violating postal laws and regulations. Many other bureaus and divisions of the federal government have their own inspectors and agents who are charged with watching for violations of particular federal laws. All in all, this vast army of federal law enforcement officials numbers more than twenty thousand.

Police Power of States and Localities

While the federal government is making inroads upon the police power of the states, they nevertheless continue to exercise this power broadly and in innumerable ways. A mere citation of instances of state laws to protect the public health, morals, life, and welfare would cover many pages indeed. The Court on frequent occasions has protected this sphere of the states from federal encroachment, as we have seen in the two child labor cases. That this police power extends to subdivisions of government in the states is even more familiarly known to the student.

Random illustrations of such social restraints on the individual may be

⁴ For example, cf. Jones & Laughlin case, *supra*, and tenor of court in upholding A.A.A. of 1938 in *Mulford v. Smith*, 307 U.S. 38 (1939).

given. These and countless others have been upheld by the courts. Inn-keepers, druggists, chiropodists, plumbers, dentists, barbers, and many others serving the public may be required to have a license and to meet state or local standards.

Zoning and traffic laws are numerous, and varied. Laws limiting the keeping of gunpowder, the storage of gasoline, the burning of rubbish in the backyard are many and diverse. Sanitation laws, laws concerning garbage disposal, laws regulating restaurants, milk supply, and butcher shops are well known. In fact, the daily life of the average individual is protected, affected, regulated, at every moment of the day and night by a host of these local and state laws.

The state has power too to regulate commerce and industry within its borders. Here likewise, however, the federal government has been extending its powers. This it has been able to do by an expansion of the commerce power, with regard to what constitutes interstate commerce and what affects interstate commerce to such a degree that it comes within the federal sphere.

Particularly in this modern day of interrelated industries, the problem is a great one. No longer are products made from local materials, by local men, in local shops, for local consumption. Interstate relations enter at many points now, from production to consumption. The state alone may be handicapped severely in its efforts to control or regulate commerce or industry in any of its phases and at any stage, within the state.

Federal Coöperation with the States and Localities

It should be emphasized that the states and the federal government do not always struggle for jurisdiction. The elements of cooperation are many, only a few of which may be mentioned here.

Cooperative financial aid is to be found throughout the governmental levels. Road-building programs and costs have been shared by the federal government and the state. They have also been shared by the state and its counties and municipalities. Similarly the county may share the burden with the municipality or town or village.

Mutual educational burdens have been shared comparably. The federal government has contributed liberally to educational costs in land, buildings, and equipment of state institutions, particularly for agricultural studies. Through the W. P. A. it has generously aided even small localities to build needed school buildings. The states and counties have aided localities directly, and even more frequently indirectly by providing facilities for the education of pupils and students of the localities, particularly in vocational studies. The state university, supported by state funds and local taxes, gives advanced educational opportunities to young people in every locality in the state.

Funds for relief and social welfare have also been available to govern-

mental units at successively lower stages. The social and human costs of unemployment in many communities would have been far more severe had it not been for the unstinted and even unqualified aid given to them by their states and the federal government.

Intergovernmental services are likewise many. In agriculture, the Department of Agriculture gives invaluable assistance to the states, counties, communities, and individual farmers. It provides motion pictures and exhibits at state fairs. Its county extension agents serve in various capacities as counsellors to farmers and farm organizations. These agents conduct 4-H clubs to stimulate interest among the rural youth in modern improvements in home and farm activities. They provide the farmers with the latest information resulting from the experiments of the Department and state agricultural colleges. They give advice with regard to farm credit.

The Department issues exhaustive weather reports for the especial advantage of farmers. It aids in making superior water facilities available, particularly for those engaged in dairy farming. It aids states to acquire, develop, and maintain valuable forest land. It aids agricultural workers to become farm owners. It aids states to exterminate plant diseases and plant pests. These are but a meagre few of the services performed for states, counties, localities, individuals.

All of the many public health services in the nation, from the smallest board of health to the extensive national Public Health Service are in constant and active cooperation for the welfare of the nation and the individual.

Likewise in labor and commercial relations, fire and flood control, public institutions for the insane, public libraries, and in innumerable other services to the community and the individual, the larger sectors of government extend services downward.

Notable too is the extent of cooperation in law enforcement, despite occasional problems in jurisdiction. City and state police give valuable aid to "G-Men" and other federal enforcement officials. The national guard comes to the aid of communities in crises of law and order. The coast guard coöperates with the harbor patrols.

The Division of Identification and Information of the Federal Bureau of Investigation is a gigantic repository of information on specific criminals throughout the country. This information is not only for the use of "G-Men" but is available for instant use by city or state police anywhere. The growth of coöperation between the law enforcement agencies throughout the country is rapidly catching up with the advantage modern means of transportation and communication had been giving the criminal.

This cooperation in law enforcement is further evidenced in the federal government often coöperating in the enforcement of state laws, and in the states adopting federal laws in instances where lack of uniformity would be particularly undesirable.

The Role of the State

The position of the state in the modern American political and economic scene has been challenged frequently in our generation. Three schools of thought with regard to the position and future of the state in the nation are especially provocative.

First, there are those who emphasize the historical and constitutional position of the state. They declare that the states have led the way in democratic forms of government, in constitutional principles, and in progressive social doctrine. They protest at any threat or dilution of the historic dual sovereignty and our constitutional federalism.

These champions of the state claim that the federal government will continue merely to follow the lead of the progressive, well-ordered commonwealths. They demand that federal intervention in the spheres of the states be resisted sharply. They affirm that the states have done a good job and will continue to do so, whatever party is in national power.

A second group proclaims but does not mourn the decadence of the states as governmental units. They say that the state has played its role, if it really ever had one. In coping with modern, complex, highly interdependent economic and social problems, now of nationwide scope, the state is a geographical misfit or nonentity, they allege. Its boundaries fail to coincide with the dynamic and structural elements of modern society, economic, social, and even political.

These critics of the state find its court systems inferior, its public officers less competent, graft prevalent, and the legislation often poor. In fact, they speak little of and for the state that is good. They predict that the states will and should slump into obscurity as county governments have in some areas.

This group insists that the federal government can more properly take over the broader functions of the state, and should. Thus a more efficient and necessary centralization could take place. There are, of course, varying shades of opinion and vehemence in this group of critics especially.

The third viewpoint is perhaps becoming the largest prevailing opinion. These persons admit the changing character of federalism in practice. They admit that many phases of our industrial society present structures and problems that now elude state control and solution and have become increasingly nation-wide in scope, regardless of the constitutional patterns of separation.

This school of thought admits further that many state governments are unwieldy, archaic in structure, incompetent in function, and even corrupt. They admit these accusations and even more.

However, they do not agree with the second group that therefore the state is a dying mechanism that should not be preserved in its quasi-sovereign characteristics. They declare that one does not destroy every sick person

or scrap every faulty machine. They point to similar accusations applicable to many cities; yet one does not advocate the reduction of cities to insignificance and impotence as governmental units.

Some of these defenders argue as the first group, with regard to the historical and constitutional position of importance of the state. Others say that even regardless of challenge of that status today, the state can and does constitute a vital, integral unit of government. They assert that the answer, as in the case of cities, is revision of the structure and functions of the state government appropriate to modern needs and character.

Such advocates point out that some states have been going through stages of admirable reorganization from which even the federal government can draw many lessons and borrow many principles and practices to good advantage.

They emphasize that many problems are still local, and that even the broader ones have varying character regionally, with which the people of that area have special knowledge and the special incentive necessary for correction and solution.

These champions of the states point with pride not only to internal improvements in state government and to forward-moving state legislation, but also to the strides made in inter-state relations, particularly in many adjacent regions.

Relations Between the States

Problems of interstate relations have grown acutely. Jurisdictional conflicts have been numerous in the past and continue. Rivers that flow between two states, or through several, a harbor bounded by two states, present need for cooperative action.

Discriminatory tax provisions and trade barriers, leading often to retaliatory measures, have increased. Problems of conserving natural resources plague interstate relations. Salutory action by individual states may serve to aggravate the particular problem.

Where the problem is one peculiar to two adjacent states it has on occasion been satisfactorily handled by the informal action of the administrative officials most concerned in the two states. This is most feasible where these administrative officials have rule-making power.

By informal agreement such officials can establish regulations of uniform character to make interstate intercourse in their sphere more effective. Problems surrounding the authority to act thus informally and pertaining to the permanency of the solution are present, however. In some instances, neighboring governors have been able to agree to pertinent legislation to be presented to their legislatures.

Uniform state laws have taken on a broader compass, however, than merely between two adjacent states. As set forth previously, there are many spheres in which Congress cannot legislate and yet in which it is

certainly desirable to have uniformity of law over as wide an area as possible.

This is especially vital in the field of business relations. Even the simplest of commercial transactions today may involve the passage of goods, of bills of lading, of trade acceptances, across state lines. Varying state laws in these and many other phases of trade have hampered commerce and trade materially. Accordingly, uniform laws have been introduced in many of these activities to assist buyer and seller.

Such uniform state laws have been fostered by the National Conference on Uniform State Laws, an official body now nearly a half-century old. It is composed of three commissioners from each state, appointed by the governor. Uniform laws, adopted by at least one-half of the states, include such as the Uniform Sales Act, Uniform Negotiable Instruments Act, Uniform Bills of Lading Act, Uniform Stock Transfer Act, Uniform Narcotic Drug Act.

In another chapter will be described the activities of highly organized pressure groups, seeking not only federal legislation, but also promoting specific uniform legislation in the states, on matters vital to these groups. These numerous groups not only have headquarters in Washington, to guard the scene there, but also have strategic headquarters scattered throughout the nation, to coax or restrain state legislatures as well.

Some have argued for a uniform child labor act, since a federal statute appears as yet an unauthorized power. It would, however, meet the same resistance that the latest attempt at amendment is facing. Pressure groups are too militantly opposed and public opinion is too divided and inert.

It is clear, then, that the solution of mutual problems of the states by uniform legislation is most feasible where social and economic forces do not heatedly conflict. Where the proposal expedites trade and communication, and the opposition is slight, such solution is possible, although even here the path is cluttered with obstacles. Certainly it is not a medium of social and economic reform, except in the rare instance where public opinion is in general agreement.

The federal government has indirectly been a factor in much state legislation that approaches uniformity. In order to gain the benefits of much recent legislation by Congress, states have been moved to pass laws on subjects and often with minimal standards and provisions acceptable to the federal authority involved. Such may be observed with reference to the national programs of the P.W.A., the Farm Credit Association, the Federal Deposit Insurance Corporation, the Federal Housing Administration, and other federal programs.

Interstate compacts are formal documents drawn up by adjacent states or by states in regional relationship, to solve a mutual problem. These have been relatively few: some twoscore in the last hundred and fifty years. The compact must be ratified by each state legislature concerned and by

Congress. Many feel that this device offers a valuable means of interstate coöperation in settling jurisdictional, social, and economic conflicts of the area involved.

Among the conflicts that persist are various state regulations disadvantageous to the neighboring states. Taxes levied on out-of-state commercial vehicles; refusal of admittance to out-of-state workers unless they can show themselves able to support themselves; taxes or license requirements discriminating against products competing with products of the state; discrimination against out-of-state bidders for state contracts; taxes on chain-stores: these and many other regulations and restrictions have been set up, bringing in their wake both recrimination and retaliation.

The National Council on State Governments has struggled long and hard to iron out these ruffles in interstate relations and commerce, by sponsoring conferences and investigations. The individual state commissions on interstate cooperation have wrestled with many of these problems. Such commissions of some of the foremost industrial states have done particularly striking work in holding conferences on many mutual problems, such as the trade barriers, problems in labor and industry, and problems pertaining to crime.

Regionalism

To even the youngest student of history, regionalism in itself is not a new concept. He learned early to distinguish different areas of the country as New England, the Middle Atlantic States, the South, the Middle-West, and the West. In geography he learned to refer to various sections as the cotton country, the corn belt, the cattle country, the oil lands, the industrial states. There are many who advocate a formal organization of our nation into just such comparable regional areas. This is called "regionalism."

The schools of thought relative to regionalism vary. Some would make such areas compact governmental units. Each would have its own legislative assembly and a governing executive. These advocates feel that such areal organization would be better adjusted to economic and social problems pertaining to the particular area than the present hiatus between state and nation. They feel too that federal law could be administered more effectively through such units.

Others have the opinion that the present governmental structures are sufficiently complex without making confusion more confounded. They deny that at present such regions would be composed only of homogeneous areas with dominantly common problems. They admit that regional interests exist in many particulars. But they assert that official, informal, and private associations already functioning regionally are sufficiently protective of those common interests.

The associated activities of the New England Council have helped to

publicize the area and to aid in handling some of its industrial and social problems. A group of Southern governors has, in recent times, given out their joint messages about the residential, commercial, and industrial opportunities in the South, in advertisements of nation-wide scope.

The federal government divides the nation into regions for many of its activities. These regional patterns vary greatly in number and size. There are eighty-four federal district courts. There are ten circuit courts. There are twelve districts in the Federal Reserve System. There are four Army areas, which include nine corps areas of equal size in population. The Social Security Board has established twelve regions, each in charge of a regional director. The Federal Communications Commission has thirty field offices. The National Labor Relations Board has twenty-two regional directors. The Veterans' Administration has fifteen regional headquarters. The list can be extended indefinitely. It is to be noticed that there is no common agreement among the federal agencies as to what constitutes a feasible regional area. Moreover, even where the number of regions is the same, the comparable regions are not identical.

Role of Local Government

Cities have been attacked for corruption and mismanagement ever since the days of Sodom and Gomorrah. They have been the targets of reformers more than any other unit of government. Particularly with the growth of our industrial society cities have sprung up like the proverbial mushroom, but without its symmetry.

One's local government is very real to him. It touches him every day, throughout the day. He requires it to perform more daily services for him than any other unit of government. When the services coincide with his convenience and his standards, he is proud of his city. When he is inconvenienced, he berates it. And seldom does he feel that the taxes are just about right for the services received.

The composite citizen wants the city police to be well-groomed, smiling fellows, expert and alert in the use of the most up-to-date methods and equipment for crime detection. He wants the best fire-department in the county, state, nation.

He takes pride in the city's highly specialized system of courts: the juvenile court and the domestic relations court, especially, with experts trained in these matters, as well as a women's court, a night court, a traffic court, and a small-claims court. He is proud of a handsome municipal courthouse.

He demands a public water works giving him copious supply of the purest water. He may feel that the city itself should run a good bus line convenient to his residential area, and perhaps even a municipal theater and stadium.

He wants the best school system at least in the state. Of course he

may send his children off to private school before college, but in the meantime he wants them to have as fine a preparation in their own city. He wants good, free library facilities, particularly with a branch conveniently near his home, so that he can get that book or look over the picture magazines in his leisure.

He is properly meticulous, no doubt, about the public health services his city provides. There should be health-seeking examinations by experts of water, milk, food, school children. Sewage and garbage must be efficiently and properly disposed of. There must be ambulances, emergency aid stations, adequate hospitalization, preferably under municipal auspices.

There must be parks, playgrounds, a public golfcourse, tennis courts, and possibly public beaches or other bathing facilities. He may feel that the city should do well and considerably for its poor and underprivileged. This may require special institutions, nurses, social workers, employment services, free legal aid, municipal lodging houses, provisions for food, clothing, shelter.

He would demand a City Beautiful, revamped to be attractive to him and his guests. Good roads, good sidewalks, both clean and dry in winter and summer; good street-lighting, shining throughout the night, the segregation of unsightly slums, filling stations, the shops for the poor, and the like—these he will want. He will want his city to rid itself of the Japanese beetle, mosquitoes, and other pests. He will want fine stores, restaurants, industries brought in and encouraged by the city fathers.

These and countless other services he will feel his due as a resident. Of course, the taxes on real and personal property, the special assessments and license fees, that constitute the revenue for such a vast undertaking, must descend on him as negligibly as possible.

Other services which his city renders he is not so aware of. Yet these too are vital. His city serves him in some of his relations with the state, and even nation. He votes for state and national officials in a place provided conveniently in his own locality, even vicinity, without having to travel to the state capital or even city hall to do so.

Besides, his city is a unit in the police administration and in the judicial system. The state police will have headquarters and barracks there or near by. There even may be a federal district court sitting in his city. Moreover, the city handles for the state some tax collection and may receive reimbursement from the state for some of its functions, thus securing him better facilities.

The administrative organization of cities to provide these services varies in character considerably. Three major types can be identified.

The mayor and council pattern has been much criticized as cumbersome. Perhaps because it is the older form it has often been in the grip of bosses and political machines that have grown into the fabric as the city spawned and sprawled. Graft and venal practices have been prevalent

in many cities, to which this form has become a tool. As in business, where sharp practices and a sluggish public can produce great gain for enterprising individuals of easy conscience such entrepreneurs will work tirelessly to that end. In this pattern of government, as in all patterns of government, the free citizenry get the character of government they permit, demand, or deserve.

The mayor and council form of government preserves some of the factors of separation of powers. The mayor has the customary administrative functions. He makes appointments. He has power to veto ordinances of the council. He prepares the budget. He supervises administrative departments.

The council is likewise elected as is the legislature. It levies taxes, makes laws or ordinances, grants franchises, makes appropriations. Your city may be one of those wherein the voters may effect legislation directly, through initiative and referendum, and may have check upon mayor and council through the democratic device of recall.

In the commission form of government, the administrative and legislative functions are fused. The voters elect a commission, frequently five to seven in number, in whom are vested the powers enumerated above. Customarily each member of the commission is head of an administrative branch of the government, either as designated by the voter or as decided by the commission itself. Thus one will be police commissioner, another fire commissioner, one head of the law department, another in charge of public services, one head of finance, another in charge of welfare—if these are the divisions in the city's framework.

Here too there may be provision for recall, initiative and referendum. Here too there may be separate administrative bodies responsible only to the voters, as in the case of a school board. Following the striking example of Galveston at the opening of the century this form of government had considerable vogue and hundreds of cities adopted it. In recent years, however, it has declined in popularity, due to natural defects and to the rise of the city-manager plan.

Such vast power located in so few hands makes for inefficiency and corruption as much as in the mayor-council form, unless the commissioners are both experts in their fields, which they are usually not, and public spirited citizens, who are all too rare. Moreover each commissioner may feel the affairs of his department as inordinately vital, so that a balanced program is less likely.

With the development of the city manager form of government a quarter century ago an important stage in public administration was reached. Regardless of its pattern in any particular city, the keystone is the appointment as executive director of municipal affairs of an official trained in public administration rather than in the battlefield of local politics. It is a career appointment.

While this form may be appended to the mayor and council form, the city manager is the administrator, the general manager of the corporation as it were. He is judged not for his votegetting power, but for his competence in serving as chief executive of the far-flung enterprises of the city. It is a position calling for a rare type of man. He must be skilled in personnel selection. He must be able to hold his own with the local machine and conflicting interests. He must be trained in public finance, sanitation, municipal law. He must be an able executive.

It may readily be seen that such capabilities and capacities, with requisite training and experience, are to be found in few men. Some cities have had marked success with the form, due to happy appointment of a uniquely qualified manager and due to a public desire for good non-partisan government. In many others, the forces of politics, the problems of personnel, the parasitic attacks of those seeking gain, coupled with a manager too small for the herculean job, have defeated an earnest effort. The plan still is in favor, however, and continues to direct the attention of the tax payers to the role in government of the impartial trained expert making a career of management of public affairs.

One unique feature of the career profession of city manager should be indicated. A mayor notably successful in a small city will not be asked by the voters of a larger city in another state to be its mayor. But a peculiarly successful city manager may look forward to "promotion" to a larger city, even in another state, quite as clergymen move on to larger parishes as their talents are recognized.

Here it may be mentioned that a few counties have borrowed the city manager device by appointing a county manager to run their affairs. It is too early yet to predict whether this may prove a solution of the problems of the county, which some feel now to be an obsolete, unnecessary subdivision of government. Expanding metropolitan areas and assumption by the state and federal governments of many county functions have diminished the importance of the county in many areas to a mere geographical unit.

CHAPTER 60

THE ADMINISTRATIVE PROCESS

The Role of the President

The governor of a state may be addressed as "His Excellency." The mayor of the smallest city may be addressed as "His Honor," even as the part-time judge of a small police court. The President of the United States is addressed as "Mr. President." In that plain, unaffected title lies evidence of the trust of the millions in democracy and their chosen spokesman.

The President of the United States is several functionaries rolled into one. Each capacity requires special abilities and could be a full-time job in itself. First and foremost, he is the chief executive, with the special duty of seeing that the laws made by the people's representatives are carried out. It is interesting to note that the function of lawmaking is set forth first in the Constitution, in Article I, whereas the executive functions of government are given second, in Article II. To be sure, the functions occur in that order, but it also may be taken as an indication of the attitude of the Founding Fathers with regard to the relative position of the two functions of government.

The President is also the ceremonial head of the nation. He symbolizes the nation. He is the nation's host to visiting royalty and heads of other governments. He opens the baseball season in Washington by pitching the first ball. He officiates at the dedication of great public enterprises. He establishes the social tone of the world's greatest capital. He is photographed as receiving a poppy, a pin or button, a set of stamps, or a certificate at the opening of each annual, national "drive" for funds of major charitable organizations. He receives visiting delegations of small and important social, religious, and political groups.

This function, symbolic and ceremonial, is almost the sole function of the entire British royal family, and they are kept busily engaged in these activities in a relatively small nation. But in America, in a land of vast area and enormous and innumerable enterprises, we expect our President to do a full, tireless, gracious job of this as well as the other important functions falling to him.

While a President is presumed to be "above politics," as the chief executive and ceremonial head of the entire nation, he is perforce scarcely ever out of politics. This is due to a third active job he possesses. He is the titular and often powerful, responsible head of his party.

In this, as in all other activities, he has organizational assistance and advice, but often the burden of decision and action is his. The party is counting upon him to bring it favor, if not favors, so that it may become strongly rooted in management of the affairs of the people. To hold his party together, to keep it in power, and to secure his own reelection, the President normally needs to be a political chief of skill and strength. He is expected so to distribute patronage that not only will the work of administration be capably done, but also that the proper party aides will be rewarded and the party organization reinforced. He is expected to arrange his speaking tours and visitations at occasions and in strategic areas so that the wavering will be revitalized, the faithful encouraged, and the skeptics converted.

A President might perform ably in these threefold tasks and still fail in the eyes of some Americans. These feel that his fourth function is perhaps his greatest. To the President the people look for leadership. Just as a clergyman interprets the Word and leads the way along the spiritual and ethical path, the goal of which he clarifies, so too such citizens would have the President lead the way to and clarify the goal of a genuine democracy and the "American Way of Life."

Such expect him to do more than establish the avowed platform of his party. They expect him to take the lead in shaping the foreign and domestic policies of the nation. They look to him for guidance and even instruction in these matters.

Many would deny the validity of this function. Congress is to legislate. The President is to administer. For him to do more, they feel, is not only a violation of the doctrine of separation of powers. It is also a violation of the historic conception of the presidency and of democracy. They may even fear it as a step towards fascism. The fact is, however, that the "great" Presidents have been leaders of contemporary thought and action, and have been applauded for so being. The present day finds no less need of leadership, and a desire by many for it.

The President and His Cabinet

To qualify under the Constitution for the office of President of the United States is not difficult. One must be thirty-five years of age, a natural-born citizen of the United States, and have resided in this country for at least fourteen years.

The most difficult requirement, however, is one not mentioned in the Constitution. He must be one chosen under certain procedures by a political party which can successfully present him and itself to the nation in a campaign such as would amaze our Founding Fathers, who made no provision for political parties in our governmental structure.

The customs and practices of political party organization as they have developed through the years are deep-seated. They make further interest-

ing illustration of the way in which our structure of government has grown outside of the Constitution as well as within it. These and the process of nominating and electing a candidate will be discussed in a later chapter. Our concern here is with the activities of the President when elected.

On January 20, the President elected in the preceding November is inaugurated in a simple ceremony in Washington. The oath of office is administered by the Chief Justice of the Supreme Court of the United States, subsequent to which the President makes an inaugural address usually indicating the goals he seeks for the nation during his four years in office.

Of special interest and speculation will be his choice of a Cabinet. This too is a phase of governmental organization and activity which has grown up outside the Constitution. Heads of departments are referred to in the Constitution, without enumeration. The Constitution also mentions his prerogative of seeking their opinions on governmental matters. But the formal gathering together of these department heads into a Cabinet is a custom of informal and early origin which has become a fixed custom and institution.

The Cabinet is the President's own official family. He alone chooses it, although there are often governing and restricting factors. One is confirmation by the Senate. While this is largely a matter of form, on some occasions the debate thereon has been bitter and the President has not had his way.

Another factor governing his choice is his personal regard for the individual. This may be because of years of association. It may be because of his appreciation of the especial abilities of the person. It may be because of his admiration for the individual's attitudes on matters relative to his department and in accord with the President's aims in office. Or it may be because of gratitude for unusual aid rendered in the presidential campaign.

Usually, of course, the cabinet member will be one of the same party as the President. There may be some effort to choose the cabinet members with an eye to giving recognition, not only to the several divisions of opinion within the party, but also to the several areas of the country.

Since the Cabinet exists to aid the President in administration, his use of it will also be a matter completely of his own discretion. Some presidents have leaned heavily on the Cabinet; others have treated it casually, even flippantly. Even if he seeks their advice in a matter of policy, he need not follow it. He may change the occupant of a particular chair as often as some people change their maids, or he may hold over as a faithful retainer one or more incumbents under the preceding President, as evidenced in the case of the Secretary of the Treasury, Andrew Mellon, who served continuously under Presidents Harding, Coolidge, and Hoover.

The relative strength and weakness of the appointments to the Cabinet

will depend on the President. He does not desire to be surrounded, naturally, by strong-minded individuals, who may forcefully oppose his plans with strong views of their own, and particularly if in doing so they may emerge in the public mind as presidential timber themselves. For this reason at least, many Cabinets have included colorless individuals who rapidly returned to the relative obscurity from which they came.

The one Cabinet post that many feel certain in predicting is that of Postmaster-General. For years the Presidents of both parties have designated for that office their campaign managers. This is in part a reward. In part, however, the apparent purpose is to place this skilled party chieftain in a position in the government where he can best direct the maintenance and repair of party fences. The close relation of the wide-spread post office system to the patronage which loyal workers of both parties seek may account for this.

The high position of the Secretary of State in relation to foreign governments usually dictates the selection of as high-calibered a man as the party may afford. He may be the only man in the Cabinet bearing even some of the qualities and characteristics of a statesman. Of other Cabinet appointments little can be generalized, except that laymen will be designated to the Navy and Army secretaryships.

The Power to Appoint and to Remove

The President has power to appoint many other officials of the national government. As Commander-in-Chief of the Army and Navy, he appoints army and naval officers. As we have seen, he appoints the judges of the federal courts, subject to confirmation by the Senate. He designates and appoints our representatives to foreign governments.

There are over 900,000 persons in the employ of the federal government. Of these, two-thirds are under Civil Service. The rest are appointed by the President or his administrative subordinates. The appointing power can readily be seen to be a vast one. For most of these appointments the President will have available the suggestions of party leaders, particularly the Senators from the states concerned. Should the President go counter to the preferences of these Senators they may object to the nominations presented by the President to the Senate and through the operation of an established custom of "senatorial courtesy" their colleagues in the Senate may refuse to confirm these nominations.

While the Constitution gives the President the power to appoint, it is silent on the equally important power of removal. This is more perplexing where the position is one calling for senatorial confirmation of appointment. Does then the President need to have the senatorial consent to remove?

As the result of leading Supreme Court decisions, it is now held that the President in such cases may remove an official without the consent of the

Senate, providing the position in question is clearly an administrative one, as in the case of a postmaster presidentially appointed¹ It is accepted that, since the President in the final analysis is responsible for his subordinates, he should have full power to remove when he feels it desirable

Where the official appointed with the consent of the Senate has functions that are not merely administrative, another rule applies. The Court has held that the President can not remove at will a member of the Federal Trade Commission, since the functions of the latter are in part legislative and in part judicial² Such a removal would constitute a violation of the doctrine of separation of powers, and tend to destroy the "independence" Congress has sought to give certain regulatory commissions.

Judicial and Legislative Powers

Under the judicial powers of the President should be reiterated his power to appoint judges to the federal courts. The character of the federal judiciary may thus be influenced and determined by such selection. Indirectly this is wielding a great judicial power.

To the extent that a President exercises his power to grant pardons and to give reprieve to those charged with violation of federal law, he is using a power of judicial force. He may grant a pardon even before the court has convicted the defendant. Or the President may change the sentence to a lighter one, by commutation Likewise the President may pardon a group of people before a trial takes place, by a grant of amnesty In the exercise of his power to pardon, the President is customarily advised by his Attorney-General.

Although the writ of habeas corpus is one of the individual's constitutional guarantees, the President may exercise the great judicial power of suspending it, in public emergencies great enough to require it.

The presidential powers make him not only administrator and judge, but also legislator. The means through which he can affect and effect legislation are many. There are direct and positive ways he may establish law. He may, through the State Department, take the initiative in the making of a treaty with a foreign power, which when ratified by the Senate becomes part of the law of the land.

In some instances, Congress may empower the President to negotiate with foreign powers without the formal necessity of a treaty and therefore without need for action of the Senate Such "executive agreements" often have to do with matters of trade, as witness the power given to President F. D. Roosevelt to make reciprocal tariff agreements with foreign countries.

Another evidence of direct legislative power of the President lies in his

¹ Myers v. U S., 272 U.S. 52 (1926)

² Rathbun v U S, 295 U.S. 602 (1935), sometimes referred to as Humphrey's Executor v U.S

issuance of "executive orders." These may have to do with regulations of the services. Army, Naval, Civil, Consular, Customs, etc. Or they may be detailed regulations and orders pertaining to more general legislation of Congress.

This ordinance power is a great one and is legislation of a minute, concrete order. In many instances the Supreme Court has upheld it as not such a delegation of legislative power by Congress as to be gross violation of the doctrine of separation of powers. But particularly in cases declaring the N. R. A. and the A. A. A. of 1933 unconstitutional, the Court held that the Congress had excessively delegated its power of legislation to the President who had been given broad powers by Congress to decree regulations and procedures in these fields.³ Apparently so long as Congress indicates the scope and sets up limitations of the President's power to decree, as in the dollar devaluation, then Congress may still delegate to him the power to define detail, which regulations of course become law as though enacted directly by Congress itself.

The veto power is no less a legislative function. Let us assume that a bill has passed Congress by a bare majority vote. It now goes to the President and awaits his signature. If he disapproves of it, he may "veto" it. His single "vote" is thereby more powerful than the votes of the more than 250 members of Congress who voted for it and more successful than the combined efforts of over 250 members of Congress who voted against it. To be sure, the Congress may be able to pass it over his veto. But to do this, the advocates of the bill must muster not a bare majority of votes but two-thirds. That requires upwards of a hundred additional votes, which are not always easy to secure.

The device of the "pocket veto" is used on occasion by a President particularly with regard to legislation upon which he may be wavering. Bills not signed within ten days after passage become laws without his signature. However, if Congress adjourns within that period and he fails to sign it, the bill does not become a law.

These are not the only legislative powers of the President. He has considerable influence over legislation in many indirect ways. One of these relates to his relations with Congress. He may call it into special session to consider particular legislation. He cannot directly control the outcome, of course, although his influence may be great. Through special messages and his annual message to Congress on the state of the nation he may publicly suggest or urge particular legislation.

These pressures may be aided by a second means, that of his leadership in his party. If his party is staunchly in control of the Congress and ready to follow his leadership, his preferences may receive active support and become enacted. These preferences may be indicated publicly,

³ *Schechter v. U.S.*, 295 U.S. 495 (1935); *U.S. v. Butler*, 297 U.S. 1 (1936)

as above, or privately, in White House conferences. If some of his party are reluctant to follow his lead on a particular measure, a strong President may hold over them the weapon of patronage, use the persuasion of expectant favors for their constituencies, or even threaten a "purging" when they seek reelection.

A third means of influence over Congress has developed rapidly in our time, due particularly to the radio. The President may carry the fight to the people. Public addresses over the radio, "fireside chats" to his "friends," the broadcasting of his messages to Congress: these aid ably in bringing his viewpoint, his arguments, and his pleas for support direct to the voters upon whose good will the members of Congress are dependent for their reelection.

If his relations with the Press are happy, the President may likewise secure favorable reverberation of his views in newspapers throughout the land. And of course he may adopt the older, more arduous device of touring the country, making addresses at strategic points.

Thus it can be seen that a President so-minded can be a strong and effective one-man pressure group in himself, even though there are many who would say that in going to such extremes he is invading the sphere of Congress and reducing a great democratic vehicle to a rubber-stamp. Those who look for genuine leadership, however, may applaud his zeal, resting secure in the belief that the Congress and the courts are still able to prevent undue usurpation of legislative powers by the executive.

The Major Departments of Government

The administrative functions of the federal government are performed by two great groups of agencies. One of these, a subject of this chapter, is the multitude of departments and bureaus headed by the Cabinet. The other, to be discussed in the next chapter, is the large group of so-called independent regulatory commissions. Efforts to reorganize the composition, functions, and relations of these two groups will likewise be taken up in the chapter following.

There are ten members of the President's Cabinet. Each is head of a major department in the government. These departments have been established gradually by Congress, over a period of a century and a quarter.

To describe these departments as separate units is conventional, but is not completely helpful, since many of their functions overlap. In creating new bureaus from time to time, Congress has shown little consistency or logic in assigning them to respective departments. Emphasis on the relations of functions rather than the mechanical departmental organization makes for a more vivid conception of our government.

(1) *Foreign Affairs.*—The Department of State, under the Secretary of State, is in charge of foreign affairs. When the President appoints an Ambassador to England, for example, this official and the entire legation

are under the supervision of the State Department. For that trip abroad you apply for a passport from the State Department. While abroad, you will have available the advice of the United States consuls, even in some remote areas. If a new treaty is drawn up between the United States and another nation, it will be the work of the State Department.

The United States participates in many international conferences and organizations. The supervision of these activities, both as to extent, membership, finances, and authority, rests with the State Department. A few of these organizations, numbering over fifty, may be cited, to give idea of character and scope: Central Bureau of the International Map of the World on the Millionth Scale; Governing Board of the Pan-American Union, Inter-American Radio Office; International Bureau for the Protection of Industrial Property; International Council of Scientific Unions, International Institute of Agriculture; International Labor Organization; International Office of Public Health; International Penal and Penitentiary Commission, International Technical Committee of Aerial Legal Experts, League of Nations Advisory Committee on Social Questions; Pan-American Sanitary Bureau, Permanent International Association of Navigation Congresses.

But other departments are interested in foreign affairs too. The War and Navy Departments are, in particular. Army and naval officers will be found at our foreign embassies, serving as attachés. The Judge Advocate General of the Navy studies and makes reports on questions of international law, when required by the Secretary of the Navy.

The Department of Commerce formerly had its own system of agents abroad, to study and analyze trade conditions and to make detailed reports on specific markets for particular American products. These agents were properly absorbed in the State Department in 1939, although the Bureau of Foreign and Domestic Commerce of the Commerce Department continues to organize and publish the studies, and to advise American business men with regard to foreign prospects.

The Department of Agriculture is likewise interested in foreign affairs. It has agents at many of our foreign offices, studying the market for agricultural exports. The Department is naturally interested in trade agreement proposals affecting the farmer. The Labor Department too is interested in foreign affairs, particularly with regard to immigration. To facilitate the selection of immigrants, the Department has its own agents at American consulates where persons are applying in great numbers for permission to come to America.

The Post Office Department is interested in foreign matters in connection with its international services in money orders, parcel post, mail, and air mail. The Treasury Department has foreign contacts through its custodianship of gold shipments from abroad, its activities against smuggling, and its quarantine regulations.

(2) *Public Finances*.—The obvious function of the Treasury Department, headed by the Secretary of the Treasury, is to collect the revenues of the government and to dispense them under proper authorization. In this connection it is the custodian of all public funds, as well as the vast sums now accumulating under the Social Security programs. Likewise it is the logical authority over the minting of coins and the printing of currency.

Other departments have related activities. The Interior Department has charge of the disposition of public lands. Most of the other departments engage in specific monetary aid to groups and projects coming within their protection, far too numerous to cite here. And of course all departments secure their disbursements from the Treasury Department.

(3) *Army and Navy*.—The War and Navy Departments are in charge of matters pertaining to national defense, war preparation, and warfare; the one on land, the other on sea. The Navy, as well, has its own "soldiers," the marines.

The War Department has control over the dredging of harbors and navigable rivers. The patrol of our waters, however, is within the jurisdiction of the Treasury Department, with its extensive Coast Guard and Life Saving Service, which also now operates lighthouses formerly under the Department of Commerce.

The Commerce Department too is interested in marine matters. It licenses and inspects steamboats. It regulates fisheries, and conducts coast and geodetic surveys. It fosters the development of inland waterways. It seeks variously to aid the merchant marine.

Both the Departments of the Interior and Agriculture are interested in irrigation projects. The Labor Department concerns itself with conditions of labor of seamen.

The supervision of American dependencies is divided among three departments. The War Department has had the supervision of the Philippines and the Canal Zone. The Navy Department looks after such Pacific islands as Guam and Samoa. The Interior Department has the care of Alaska, Hawaii, the Virgin Islands, and all American Indians. Puerto Rico, formerly a ward of the Army, is now within the jurisdiction of the Interior Department.

The War and Navy Departments do not even have aviation to themselves. Some have urged a separate air corps, but both the Army and Navy have their own air services. The Commerce Department was long active in civilian and commercial aviation, especially in providing innumerable services to foster such, and in licensing planes and pilots. The Post Office Department early fostered aviation through air mail contracts, as it has likewise aided shipping. There was some fusion of control over civilian and commercial aviation by the creation of an independent board, the Civil Aeronautics Authority, to which were given the functions of the

Bureau of Air Commerce of the Commerce Department and the Bureau of Air Mail of the Interstate Commerce Commission. Recently, as part of the reorganization program, the C. A. A. has been transformed into the Civil Aeronautics Administration and returned to the Department of Commerce.

Aviation and shipping are perhaps aided even more than agriculture by the excellent services of the Weather Bureau under the Department of Agriculture.

(4) *Counsel and Law Enforcement.*—The Department of Justice, headed by the Attorney General, is Uncle Sam's prosecuting attorney and legal adviser. When the President or one of the departments wishes a legal opinion on a matter of function, the Attorney General's office furnishes it. This is an especial aid in connection with the executive orders of the President.

Many other departments have their own legal staffs, of course, to handle the specialized legal matters coming within these divisions. The State Department has its own legal adviser. The Treasury Department has its own legal division. The War and Navy Departments have offices of the Judge Advocate General to advise not only on matters of rank and promotions, and to conduct courts-martial, but also to advise with regard to military and naval legislation and to examine titles to land and contracts of purchase and sale.

In recent times the Department of Justice has become best known to the general public for the activities of its Bureau of Criminal Investigation and the "G-Men" of the F. B. I. Another active division of the Department is the Anti-Trust Division, concerned with enforcement of the various anti-trust laws. Recently developed is the Civil Liberties Unit of the Department, to act upon violations of the civil liberties guaranteed the individual.

The Department of Justice is not the only law enforcement authority in the national administration, however. There are such agencies in the Treasury Department, as, for example, the Secret Service, the Bureau of Narcotics, the Customs Service, the Bureau of Internal Revenue, and the Coast Guard.

The Department of Agriculture has its own agents enforcing laws pertaining to food and drugs. The Labor Department has an immigration border patrol. The Post Office Department has officials empowered to act where postal violations occur. In this connection, as well, this Department acts as moral censor of obscene literature.

(5) *Postal Services.*—The major activities of the Post Office Department are familiar. Besides the postal and parcel services, however, the Post Office will act as your banker in at least three respects. You may use it as a savings bank, for savings deposits. It will make out money orders for you that serve as checks, which may be sent throughout the land, as well as international money orders for payments abroad. It will act as your agent

in investments, in the purchase of certain United States government bonds from the Treasury Department.

(6) *Natural Resources*—The Department of the Interior defies classification as to a single major function. A few of its miscellaneous functions may be recorded, in addition to those already cited. It supervises the Alaskan Railroad. Its Bureau of Reclamation is in charge of irrigation projects and certain flood control projects. Its Bureau of Mines investigates and regulates with regard to mining. The Bureau of Fisheries fosters the fishing industry, particularly by establishing and operating fish hatcheries. The Bureau of Biological Survey seeks to foster and protect wildlife and game. The National Park Service is active in the promotion and administration of national park systems and areas.

(7) *Education*—Until recently the federal Office of Education was in the Interior Department, its special activities will be considered under its new direction within the Federal Security Agency, in the next chapter. Other departments concern themselves with specialized forms of education, frequently in collaboration with state organizations, since education is one of the prerogatives of the states. West Point and other military training schools are under the War Department. Annapolis and other naval training units are under the Navy Department.

The Departments of Commerce and Labor provide many informational aids to business men and workmen. Even the Department of State maintains a Division of Cultural Relations to facilitate the exchange of foreign students and professors in American universities. Departments having notable library facilities are those of State, Labor, Agriculture, and War. The War Department has a distinguished medical library as well.

Many other varied administrative units assist in education in aviation, home economics, merchant marine, numerous trades. The Department of Agriculture is active too in technical agricultural training. It maintains agricultural experiment stations and coöperates fully with state agricultural colleges.

(8) *Agriculture*.—In a nation where farming is a major industry, the far-flung activities of the Department of Agriculture are of basic importance. It engages in scientific research. It distributes advice and bulletins on all phases of farming. It seeks, perhaps paternalistically, to guide the farmer's activities, for his own enhancement. It tries to improve the domestic and foreign markets.

The activities of this Department are too numerous for even casual description here. A citation of a few of its bureaus and affiliated organizations whose titles convey an indication of their especial functions may prove suggestive. Bureau of Agricultural Chemistry and Engineering, Bureau of Agricultural Economics, Agricultural Marketing Service, Bureau of Animal Industry; Commodity Credit Corporation; Bureau of Dairy Industry; Bureau of Entomology and Plant Quarantine; Farm

Security Administration, Federal Crop Insurance Corporation; Federal Surplus Commodities Corporation, Food and Drug Administration; Forest Service; Bureau of Home Economics, Rural Electrification Administration, Soil Conservation Service, Farm Credit Administration.

(9) *Commerce and Industry*—Many of the activities of the Commerce Department have been mentioned previously. Its major concern is with the gathering and making available data and information relative to commerce at home and abroad. It seeks to aid American commerce in every possible way. Here too is to be found the Patent Office husbanding the two million patents that inventive Americans have filed with the federal government.

One of the least publicized and most important government agencies is the Bureau of Standards, within the Commerce Department. This Bureau is concerned not only with standard weights and measures. It has broadened its activities to include elaborate experiments that test substances of all kinds and develop standards and specifications of incalculable aid to other agencies of the government in their purchasing. Under certain circumstances the facilities and experiments of these great research laboratories are available to private industries.

One might expect that centralized purchasing by the federal government would be located in this department, because of kindred facilities. Uncle Sam is America's most varied customer, with purchases ranging from apricots to xylophones. Many of these purchases are in gigantic volumes. Actually, his chief purchasing agent is located in the Treasury Department, next to the purse, rather than next to the information on goods. The Procurement Division of the Treasury Department does not act as exclusive purchasing agent, however. The Army, in notable exception, has its own procurement facilities.

The Census Bureau is another responsibility of the Commerce Department. It not only conducts the extensive decennial tabulation of vital statistics, particularly to determine the population for the purpose of subsequent allotment of congressional districts to the states by Congress. It also is prepared to serve business firms with statistics pertinent to their activities. Other departments engage in statistical compilations too, of course, in connection with their functions. Notable in this regard is the Labor Department with its own Bureau of Labor Statistics.

(10) *Labor*.—The Department of Labor advances labor relations and welfare, even as the Departments of Commerce and Agriculture seek to promote and improve conditions pertaining to industry, trade, and farming. Its Children's Bureau and Women's Bureau work for the protection of these groups in the labor field. Mediation in labor disputes is proffered through the offices of the United States Conciliation Service, within the Department.

Two divisions within the Department have particularly to do with labor

regulations. The Wage and Hour Division administers the Fair Labor Standards Act of 1938, requiring manufacturers who produce and ship goods in interstate commerce to conform to certain hour and wage standards. The Public Contracts Division seeks further to improve wage, hour, and other conditions of labor by enforcing government standards in these particulars in connection with supply contracts awarded to private firms by the federal government.

One might well expect to find the Immigration and Naturalization Service within the State Department. That it was long within the jurisdiction of the Labor Department indicates further the origin and role of our earlier heavy streams of immigration, when American industrialists looked abroad for sources of cheap labor, before the days of intensive mechanization of industry. That it was recently transferred to the Department of Justice emphasizes a change in the government's supervision of the alien.

The many surveys of the Department's Bureau of Labor Statistics relative to factors affecting the standard of living, particularly of the underprivileged, have led to controversial efforts to establish norms with regard to wages, hours, and conditions of labor in many and varied industries and areas. They have also been significant in correlative programs of housing and public health.

As we shall see in the next chapter, some of the agencies pertaining to housing and public health have been consolidated within the new Federal Security Agency, particularly with the transfer of the Public Health Service from the Treasury Department, and the transfer of the United States Housing Corporation from the Labor Department to the Treasury Department and then to the F. S. A. Likewise to this independent agency was recently transferred the employment service formerly under the Labor Department which sought to furnish public exchanges to find jobs in private employment throughout the nation.

Need for Reorganization

If a democratic government exists to facilitate the economic, political, and social activities of the people, as well as to provide them with additional services, then it would appear that functionally the activities of the ten departments, from this consideration, are badly scrambled.

This fusion and confusion of functions make for additional problems of policy-formation, with which the chief executive and his department heads are concerned. Likewise as administrators and directors of the execution of laws of Congress within their fields, which are not clearly delineated, these heads are faced with a tangled problem of organization of their functions and a breaking down of the tasks of administration.

From the organizational description of the major departments given, it is clear that effective centralization of functions and activities is not present

Nor is there logical grouping of related activities of government, to avoid overlapping, duplication, and jurisdictional uncertainty. That this does not make for ablest policy-making by the department heads is not surprising. In the next chapter these points will be pursued further, especially in the light of deliberate decentralization of administration as evidenced in the independent regulatory commissions, together with efforts at administrative reorganization.

Along with the problems of planning and policy, problems of organization of administrative tasks and activities, problems of revenue and expenditures,⁴ problems of public relations,⁵ public administration is faced also with the intricate problem of personnel. This latter problem is acutely tied in with problems of organization and of the purse. It also presents a peculiar problem in policy-making.

Spoils or Merit?

In the large, private corporations, the policy-makers are elected by the voters (stockholders), and the personnel is selected by the administrators or executives. In government, some of the policy-makers are elected by the voters, others appointed by the administration, some of the personnel are elected by the voters, others appointed by the administration. If clear-cut uniformity of policy is here desirable or possible, it at least is not present.

Further variation in policy is seen even in the appointment of the public personnel. Some government employees are appointed by office-holders, so empowered. Others are appointed or selected by professional personnel boards, usually as the result of competitive examinations. The former are often political appointments and are frequently labelled as "patronage" or "spoils." The latter come under what is known as civil service or merit systems.

If it were clear which positions were best filled by appointment, and which by "merit" or impartial examination, the problem would resolve itself more easily. To many that is not at all clear. And the demands of party politics becloud the issue so as to make a formulation of personnel policy exceedingly difficult. So the war between Spoils and Merit goes on.⁶

The brief for patronage or spoils is greater than many presume. Some of the arguments hinge upon the rôle of the political party in American life. It should be remembered that campaigns involve not only vast expenditures of money, but also incalculable expenditures of time and energy by an enormous army of voluntary workers.

To the great contributors of funds for campaign expenses go the satis-

⁴ Cf. Chapters 21-24 on public finance, *supra*.

⁵ Cf. Chapters 63-66 on politics and propaganda, *infra*.

⁶ For provocative and distinguished treatment of this entire problem, cf. L. D. White and T. V. Smith, *Politics and Public Service* (Harper and Brothers, New York, 1939).

factions of seeing their side win—of having their economic and political attitudes ascendant—of, perhaps, receiving tangible preferment by way of appointment to positions of trust and prestige. There is certainly at least a subconscious hope of improvement in the lot of their kind, if not directly accruing to themselves as individuals.

Likewise the gigantic armies of political workers at the bottom of the political party organization find the fray exhilarating. Likewise they may be motivated by ideologies. But no less they hope individually and collectively for personal and group advantage, if their side wins. For both extremes of party loyalists it means "happy days are here again."

The British political parties have a system of compensation for their local organizers. The paid party agent is a full-time occupation, his is a job of skills and no little prestige. But in America we depend on volunteers rather than trained professional organizers. These volunteers are the mechanics of the party machine and keep it in running order for those of us who are inactive in political participation. They are energetic in doing this phase of our work as citizens. Many would not or could not even visit the polls, and otherwise participate in democratic display, if it were not for them.

The patronage partisans argue that the distribution of jobs to these faithful ones is one way that democracy can compensate those doing some of its work. It is a relatively painless expenditure, since these positions must be presumably filled by some one. The partisans hasten to add that in general the people's trust has not been violated. They point with evident pride to selections based on competence as much as party loyalty.

Further, they point out that the nation has tendered the responsibility and management of its affairs for a term to a particular political party. If that party abuses its trust and does not serve the will of the voters, it will be subsequently withdrawn from office. Therefore it is imperative that the administration be able to delegate its tasks to individuals loyal to its purposes and zealous for its success. They assert, then, that mere skill is properly not the sole criterion of posts in government service.

Many of these utter too a Jacksonian philosophy that the people of a democracy should participate in its affairs. Under a patronage system more of the voters would share that valuable experience in one capacity or another, over a period of years.

The friends of patronage contend that it permits freshness, virility, and flexibility that are lacking in "bureaucracy," as they label civil service systems. Bureaucracy jealously guards its areas as its own vested interests. It clings to archaic and cumbersome patterns. It reaches out hungrily for new powers, and more complex areal authority.

On the other hand, the advocates of merit systems say that even if the wielders and recipients of patronage are honest and sincere in doing the people's work, there is a pronounced lack of efficiency and competence

in the spoils system. This group denies that "bureaucracy," to the extent that its undesirable features exist under the merit systems, is an exclusive feature of them alone. That condition may be as prevalent in government organized on a patronage basis, or even in corporation management. It is merely a management and organizational defect which can be cured by wise reorganization of functions and activities.

Our modern industrial society has brought revolutionizing changes in the problems of organization, conduct, and personnel of industry, agriculture, and commerce—and, likewise, of governmental operations and management. This, the merit group asserts, is the day of the impartial expert in government as well as in business.

The scale of management now present in a great city, a modern state, our vast nation, is like unto that of a vast, intricate industry. Whether or not it would be desirable or picturesque to fill the positions with loyal members of the clan, the modern need is for a personnel trained to the highest possible degree in the specific skills the particular tasks require, the merit group argues.

The extremists among the civil service enthusiasts say that our goal should be the Service State in which the people's servants will be chosen with the fine care for skill, competence and integrity that the employees of some of our great corporations and banks are.

Certainly it is true that even a modern police or fire department represents a high-powered combination of scientific techniques and highly trained personnel that would challenge the abilities of the most zealous political henchman. It seems clear that the services and functions of modern government are so vast, intricate, and fraught with social import that its delicate mechanism should be entrusted only to those abundantly qualified in abilities and training.

When one realizes that there are three and a half million public employees on the federal, state, municipal, and other governmental payrolls in the United States, the magnitude of the problem of personnel selection will be appreciated. Of this number, something less than a million are in the federal executive service.

Civil Service in America

Two-thirds of the federal employees are under civil service. Eighteen states have some form of civil service, and at least five others are contemplating it. These patterns vary considerably, both as to standards and as to positions included. Progress is being made in many cities, although here especially the spoils system clings tenaciously.

While these statistics are encouraging to the advocates of the merit system and even though the controversy with the patronage system lessens, there are still knotty problems to untie. One such is that of raising the prestige of the civil service system. This is particularly desirable in order

to increase its advantage and appeal over the spoils system. It is desirable too for its effect on the morale of the corps. And it is necessary in order to attract sufficient numbers of superior applicants.

To compare our civil service system with the British, as so many do, is illogical. Ours is established on a broad democratic base. It chooses persons for specific tasks on the basis of a practical occupational test of skill in those tasks. It was shaped as a medium for filling minor positions with low-paid, lower middle-class clerks and artisans.

The British civil service has been a haven of the upper middle-class and the lesser aristocracy. It selects persons often from exclusive schools and the great universities. They are given general examinations to test capacity and general capabilities. They are chosen with an eye to promotion to ultimate positions of trust and eminence in the national government and empire, even as a corporation may judiciously select talented young college graduates to work up gradually into important administrative posts in the corporation. Our all-too-few career diplomats who have been developed from within the ranks of the State Department are perhaps our closest resemblance to the caliber and prestige of the British civil service.

Clearly this presents a problem as to type of examination and as to the extent of possible promotion within the service. Great strides have been made in these policies in this generation. The character of our civil service is being slowly broadened so as to give opportunities to college-trained youths who seek a career in public administration or as professional or scientific experts attached to the various departments and independent boards.

If the far-sighted proponents of not merely an enlarged, but an improved civil service can win adoption of their viewpoint, then we may look forward to still more expert management of public administration in America, in all governmental structures. And we may see the day when the government—national, state, and municipal—may compete more successfully with private industry for the services of our best equipped, most talented youths.

CHAPTER 61

GOVERNMENT BY COMMISSIONS

Independent Regulatory Commissions

The administrative organization of the national government presents a picture of confusion of functions and jurisdiction in the welter of bureaus and divisions of the departments. Even the terms are not clear, for there are bureaus within bureaus, divisions within bureaus, and bureaus within divisions.

There is also a confusion of administrative policy. We have seen a half-hearted attempt at administrative centralization, through the departments headed by the cabinet officers. There is likewise a pattern of obvious decentralization, as evidenced by the so-called independent commissions. The logic of decentralization is further emphasized by granting to many of these bodies powers usually attaching to all three branches of government.

The independent commissions are administrative bodies established by acts of Congress. Where it has seemed desirable to have an administrative function of government exercised by a group of experts not subject to presidential direction, Congress has from time to time created such a board, usually giving it broad powers in that field. In some instances it has resulted from an effort to amalgamate related functions not readily relegated to a single department.

How "independent" is such a commission? To be sure, the members are appointed by the President. There are, however, checks upon his freedom here. In some cases, the bi-partisan character of the commission is prescribed. The terms of office are usually longer than the presidential term and, moreover, staggered, so he may have opportunity to appoint at best but a portion of the commission while in office. His nominees are customarily subject to keen evaluation by the Senate, whose necessary approval has on occasion been delayed or even refused.

Finally, the Supreme Court has shown itself a guardian of the independence of these commissions from presidential intervention. This is seen particularly in its stand with regard to the power of the President to remove. The Constitution itself is silent in this matter, as we have seen.

This especial problem of removal arises where the incumbent has been appointed with the consent of the Senate. The Court has made it clear that where the official is one with clearly administrative functions, as

in the case of a postmaster presidentially appointed, the President may remove without the Senate's consent.¹ But in the case of members of independent regulatory commissions, as for example the Federal Trade Commission, the President may not so act, without giving regard to specific "causes" that the act creating the commission may state.²

In emphasizing the independence of these commissions from presidential control, the Court refers to their quasi-legislative and quasi-judicial powers and functions. These bodies, then, are clearly not intended to be merely administrative agencies.

Their administrative functions pertain to carrying out laws of Congress coming within their province. They also administer rules and regulations, which have the force of law, and which they themselves make. Hence their legislative character.

In addition, many of these commissions are empowered to hold hearings with regard to violation of laws they or Congress have made in their field, or with regard to the activities of their administrative agents. These proceedings may take on the formal aspect of court procedure. The decisions they hand down are comparable in effect to the decision of a court. Hence their judicial character.

Those who are opposed to the establishment of independent commissions argue variously. Some point out that such "independence" is anomalous in a democratic society and under our constitutional system of checks and balances. Further, it is alleged that they violate the doctrine of Separation of Powers by combining functions of the three branches of government. Moreover, it is said, some of these commissions exercise legally inconsistent functions, in being at once judge and prosecutor of offenses.

Critics also feel that these boards are not sufficiently responsive to public will. This, they say, is in part due to their statutory "independence" and in part due to their non-partisan character. Finally, some challenge them on the ground of efficient administrative organization. Such a body violates, they contend, basic principles of effective centralization of function and authority, and of desirable fixation of responsibility.

Those championing such establishments argue, instead, that their very independence makes for especial value. It tends to remove these officials from the gridiron of politics and to make them more impartial guardians of democratic institutions. In fact, some in this school of thought lament that these boards are too often appointed with political considerations rather than in the spirit of complete non-partisanship.

For arguments relative to the doctrine of Separation of Powers, the proponents of this system have little patience. They emphasize that the doctrine is questionably one of fundamental importance in our con-

¹ Cf. Myers case, *supra*

² Cf. Rathbun case, *supra*

stitutional government. They will ask as to where it is enunciated in the Constitution. They will point out the many places where the Constitution itself ignores or flaunts it. They further argue that problems to be handled fully must be in the hands of experts with adequate powers of complete treatment, which may require factors of rule-making and adjudicating as well as administering.

The advocates of the independent establishments feel no inconsistency with regard to such separation from the administrative branch. They feel such functions are best performed separately from other departmental and political affiliations. In fact, some of them would so reorganize the departments as to redistribute some of those functions among existing commissions and such others as they would have created.

It is especially in the role of expertness that the commissions are defended. To be sure, the departments are manned with experts, but not always headed by experts. The commissions themselves are claimed to be more frequently composed of experts in the fields concerned, as well as staffed by corps of experts. So, in this field too of public administration we find conflict of opinion and policy, for one school of thought holds that "the expert should always be on tap, never on top."

To describe the dozens of commissions comprehensively presents many difficulties. The detailed activities of many of these commissions will be discussed in the chapters relating to their fields. Here it may be helpful to group them arbitrarily under seven broad headings

(1) *Transportation and Communication*.—First, in this category, should be mentioned the Interstate Commerce Commission. This venerable commission is well in its sixth decade of activity. This board of eleven regulates railroad and motor vehicles engaged in interstate commerce. Several of its bureaus may be cited in evidence of its organization and tasks: the Bureaus of Inquiry, Locomotive Inspection, Safety, Service, Statistics, Traffic, Valuation, and Motor Carriers.

Of its many functions, the power of the I. C. C. to determine rates of service is one of its greatest. It must authorize rates that are reasonable, just, and non-discriminatory for the carriers involved. This power extends to joint rates, interchangeable mileage tickets, and rates for transporting mail. The Supreme Court has held that this power includes regulation even of intra-state rates where the effect on interstate commerce requires it.

The problem of rate fixation involves the technical problem of evaluating the property of the common carrier. Necessary too in this connection is the authority of the commission over the securities issued by the carrier, as well as over the accounting systems used. The Bureau of Statistics compiles and publishes a wealth of data regarding every phase of operation and ownership of the various carriers within the jurisdiction of the I. C. C.

The I. C. C. has authority over the character and amount of service provided by the carriers. It also controls the nature and extent of mergers and consolidations of railroads and motor carriers. Importantly too it has powers in connection with antitrust violations and bankruptcy proceedings.

Obviously an active function of the commission has to do with public safety. Regulations are made with regard to routing of traffic, and switch connections. Safety appliances and devices, locomotive inspection, investigation of railroad accidents, and the transportation of explosives are likewise phases of study and regulation by the I. C. C. The hours of service and qualifications of carrier employees come within the scope of the commission.

Even such a scant survey of some of its major activities must impress the student with the scope of its powers and organization. As a fact-finding body, it is one of the most thorough and efficient in the government. As a rule-making body, it is a powerful legislature in itself. Its activities as a board of administration are far-flung. As a judicial body, its hearings are conducted with the formality and the highly developed judicial procedure of a high court, and its decisions are weighty in economic importance.

The I. C. C. of the sea is the United States Maritime Commission, a board of five, of whom two are retired rear admirals. Unlike the I. C. C., which has grown by expansion of its powers for over half a century, the U. S. M. C. is a result of attempted functional reorganization. It represents an amalgamation of activities and properties of the old United States Shipping Board and the United States Shipping Board Merchant Fleet Corporation. These had been transferred to the Commerce Department in 1933. In 1936 the latter agency was abolished and the former board transferred to the U. S. M. C.

The many activities of the U. S. M. C. include those of regulation, training, aid and subsidies, investigation, requisition of private vessels, construction, chartering, and federal ship mortgage insurance. Even these powers are too detailed for full development here. The Maritime Commission regulates a multitude of factors pertaining to the operation of vessels, including the wage and employment conditions in the merchant marine. In addition to exercising these functions, it conducts three training schools for licensed and unlicensed positions in the merchant marine.

The Maritime Commission grants various aids and subsidies. These range from advising legislation facilitating the favorable shipping by agricultural, lumber, coal, and other producers, to operating and construction subsidies for ship builders. Its investigations include discriminatory practices and rates, shipping conditions, operating and building costs and techniques, as well as the cargoes, management, profits, charges, salaries,

etc., of those subsidized. For all of these purposes, it has three district offices in the United States and one in London.

Federal regulation of radio, telephone, telegraph, and cable services lies within the province of the Federal Communications Commission. In 1932 the Radio Division of the Department of Commerce was transferred to the Federal Radio Commission. This commission was abolished in 1934 when the present F. C. C. incorporated its functions and property. At the same time, regulation of telephone and telegraph was transferred from the I. C. C. to the F. C. C.

This seven-man board has broad powers of regulating broadcasting technically and as an industry. It is empowered to license as well as to regulate radio stations. Its organization includes thirty field offices throughout the United States and the dependencies. The full sweep of the federal power over this vital modern means of communication has yet to be realized, but many already speak of its latent strength in the hands of a potential oligarchy or for propaganda in time of war.

(2) *Business Enterprise*.—In the field of business, the federal government has created various independent commissions. One of the oldest is the Federal Trade Commission. The special function of this board of five is to safeguard free competition among business enterprises. It does this by enforcing such laws pertaining to unfair competitive practices as the Clayton Act.

The F. T. C. further seeks to eliminate misleading and false advertisements having to do with drugs, food, and cosmetics, wherein the public health may be involved. Its investigative function has been too slightly carried out. As a result, this board has not proved as fertile a source of proposal of new legislation relative to domestic and foreign trade as was anticipated.

Its action against violators of anti-trust legislation and fair practices within its scope has limitations. It may issue a cease and desist order to violators, who then may be subject to civil suits for damages. Perhaps the strongest effect of the hearings and decisions of the commission has been the adverse publicity resulting from a reproof of a company's actions. So dependent, however, is the press upon its advertisers that such decisions have not always been given as much spotlight as the misdemeanors of a casual citizen. The F. T. C.'s organization includes branch offices in five strategic cities.

Federal intervention in our industrial society to meet economic problems presented by the organization of business enterprise, and by the inter-relationships of the consumer, employer, and employee, is not new. Legislation with regard to public control of corporate securities and finance has appeared in this generation in the Blue Sky laws of some states. But federal legislation pertinent to corporate securities is less than a decade old and illustrates anew the increase of public control of busi-

ness enterprise and of the hold that the corporate form has upon modern society.

The Securities and Exchange Commission of five is empowered to regulate transactions in securities, as well as to prevent practices amounting to fraud in the sale of securities. Two other important functions have to do with corporate reorganizations under the Bankruptcy Act, and a regulation of public utility holding companies.

The S. E. C. has nine regional offices in key cities throughout the country. Each regional office conducts investigations and hearings with regard to the legal, trading, and accounting phases of the commission's work. Certainly here again may be found powers of all three branches of the government actively residing in one body.

Any increased regulation which affects strongly any highly organized and powerful group or groups will of course meet overwhelming opposition from such interest groups. It remains to be seen how successful such will be in pressures to modify and render impotent the public control of corporate securities through such commissions as the S. E. C. In this case too can be seen the acute problems of policy and standards of control with which regulatory boards in particular are plagued.

(3) *Electric Power*.—In our national economic life, no modern development is perhaps of greater import than our transition from an age of steam power to one of hydro-electric power. Not only is there the greater promise of widespread conveniences of electric light and electric appliances and equipment of all kinds, but also there is great likelihood of a shifting and even a major revolution in industrial and social organization. Moreover, it has already assumed proportions of a gigantic industry in which huge utilities struggle for control and resist public control.

Following along in the wake of the efforts of state power commissions to regulate an industry essentially interstate in character has come the Federal Power Commission. And following the lead of government owned and operated power plants in American municipalities has come the Tennessee Valley Authority.

The F. P. C. of five is the I. C. C. of the electric power industry. It may regulate those electric utilities which are engaged in interstate commerce. This regulation extends to the securities, services, and rates of such companies.

Besides these important functions, the Federal Power Commission is also empowered to aid and supervise both public and private development of our water power. This function is very broad, ranging from private fishing rights and recreational projects to huge public dams. In addition, the F. P. C. has authority over certain aspects of the operations of such great hydroelectric power projects as those coming under the T. V. A. For these various purposes, the commission has established five great regional districts, each with its own director and staff.

The T. V. A., properly speaking, is not an independent regulatory commission of the pattern discussed in this chapter. It is an independent agency of an interesting modern sort. Actually, the T. V. A. is a corporation, created by Congress.

The public corporation,³ such as the T. V. A., is patterned after the modern business corporation, with the ownership residing in the government. In this type many of the advantages of management and organization of the corporate form are present, with, of course, dominant independence. Passing illustrations of this characteristically American development in government are the Panama Railroad Company, the Reconstruction Finance Corporation, the Federal Deposit Insurance Corporation, the Home Owners' Loan Corporation, the Commodity Credit Corporation, and the Federal Prison Industries, Inc.

"The public corporation differs considerably from the regular department acting as a trading organization. The newer forms of public-service enterprise are not subject to those offshoots of democratic control which result in the impermanence of the chief executive, extensive and direct questioning by the legislature, treasury control, strict civil-service procedures, and inability to retain the net profit of the year's enterprise. The newer public commercial undertakings are modeled after the private business corporation and differ from it only with respect to restrictions upon earnings and other limitations of finance and control which have been imposed for the purpose of safeguarding the public interest. In their internal management and ability to respond to consumer requirements, they are free."⁴

The T. V. A. is composed of a board of three directors, appointed with the consent of the Senate. Through a system of dams it seeks to obtain flood control in the drainage areas of the Tennessee and Mississippi Rivers. A second function has to do with the generation of electric power and the sale of surplus power. It is further authorized to "improve, increase, and cheapen the production of fertilizer and fertilizer ingredients," for soil conservation and the improvement of agriculture.

The T. V. A. is likewise charged with research and processes pertaining to the manufacture of munitions and therefore national defense. But, to many, one of the most interesting phases of the T. V. A. activities is the attendant sociological experiment in regional planning, which some visitors find as impressive as the great hydroelectric dams themselves.

To epitomize the scope of these varied activities of the T. V. A., a listing of some of its functional departments may be suggestive: regional planning; public health and safety; commerce; reservoir property man-

³ Cf., for an interesting discussion, M. E. Dimock, *Modern Politics and Administration* (American Book Company, New York, 1937), pp. 357-360.

⁴ *Ibid.*, p. 359.

agement; water power utilization; water control in river channel; agricultural relations; forestry relations; chemical engineering.

Perhaps no other governmental agency presents as many fascinating questions of policy and form as does the T. V. A. Here are brought to focus controversial attitudes as to the "proper" role and sphere of a government. Should the government be in the public utility business, or are public utilities basically private? Should the government compete with private business and semi-public enterprises? Is the public corporation a feasible and superior device in the management of public enterprises? Is the T. V. A. too paternalistic in concept and operation? Is regional planning practicable? How far can or should a democratic government go in this direction? These are but a few of the many perplexing problems herein represented, of fundamental economic, sociological, political, and constitutional import.

(4) *Banking and Finance*—An outstanding development in this field is found in the establishment of the Federal Reserve System. Its operations and fiscal importance are discussed in the chapters on money and banking. Let us here look at it briefly as an independent agency. Its board of seven governors is appointed by the President, with approval of the Senate, as in the case of the other commissions discussed. But here are to be noted additional restraints on the appointing power. Congress has ruled that not more than one of these seven governors can come from any one of the twelve federal districts of the System.

Besides having regard for a geographical distribution of membership, the President is expected to select such persons identified with the varying economic interests concerned, so that the industrial, financial, commercial, and agricultural groups may all receive representation.

The regulatory and supervisory powers of the board are broad, as the preamble of the Federal Reserve Act states: "to provide for the establishment of the Federal Reserve banks, to furnish an elastic currency, to afford means of rediscounting commercial paper, to establish a more effective supervision of banking in the United States, and for other purposes."

Those who advocate professional advisory councils which are not political but, rather, drawn from the groups affected by the regulations of the particular governmental agency will find such at least in the case of the Federal Advisory Council which sits four times a year with the Board of Governors of the Federal Reserve System, to tender advice on matters of policy and conduct of the System.

An important adjunct to the purposes of the Federal Reserve System is a public corporation, the Federal Deposit Insurance Corporation. This body is organized to do as its name implies, to insure the deposits of such banks in the United States as qualify for the protection. The aim is to reduce bank failures and ultimately to secure sounder coordination of bank relations.

The board of directors of the F. D. I. C. is composed of three members: two of whom are presidential appointees and the third the Comptroller of the Currency. The twelve district officers are not all located in the same twelve key cities of the Federal Reserve System, it may be noted. The capital stock of the Corporation is without par value, it carries no vote, nor any right to dividends. Some 47% of the stock is held by the Federal Reserve banks, the remainder by the Treasury of the United States.

The federal government not only regulates bankers and insures depositors, but it also is in the banking business itself. So numerous became its independent loan boards, that in 1939 consolidation was clearly necessary. The coordination of eight of these independent agencies resulted in a huge fiscal authority, the Federal Loan Agency.

This agency represents another type of governmental organization. At its head is a single administrator. This official is a coordinating supervisor of the various and otherwise independent boards and public corporations which are now thus linked together, while remaining separate in function, organization, and activities. The ramifications, activities, and organization of these subsidiary boards are too complex and numerous for detailed treatment here.

Now under the Federal Loan Agency is the Reconstruction Finance Corporation. Its board of five directors and its loan agencies in over thirty cities arrange for emergency loans to enterprises as varied as the fishing industry, municipalities, insurance companies, irrigation districts, railroads, public school authorities, banks, mines, and agricultural marketing groups.

A subsidiary of the R. F. C., the Disaster Loan Corporation, lends money to provide emergency aid in such catastrophes as floods. It has twenty-three regional offices at strategic points in the United States.

The R. F. C. of foreign trade is the Export-Import Bank of Washington. This public corporation has a board of eleven trustees made up of officials from the Departments of Commerce, State, Agriculture, and the Treasury, as well as from the R. F. C. It is empowered to do a general banking business, to the end of aiding American foreign trade, with loans and other banking facilities.

Not only innumerable business enterprises, but also the individual householder is aided in many ways too by the Federal Loan Agency. Its Federal Home Loan Bank System has twelve regional banks to aid the reserves of banks and loan institutions that finance those building homes.

The Home Owners' Loan Corporation, with its ten regional offices and thirty-four state offices, provides loans to home-owners faced with foreclosure. The Federal Housing Authority, with some sixty branches throughout the United States and in its territories, provides assistance to those building or improving their homes.

Further to aid in the building of houses and apartment buildings, the

Federal National Mortgage Association, with its nine directors and agents in over thirty cities, purchases mortgages and makes loans secured by mortgages insured by the Administrator. As an aid to urban realty, there is the Reconstruction Finance Corporation Mortgage Company, which makes loans particularly in connection with such enterprises as office-buildings, apartment houses, and hotels.

Finally, under the Federal Loan Agency, may be mentioned the Electric Home and Farm Authority, with its six regional offices. Through this agency you may arrange to buy electric or gas refrigerators, electric dishwashers, radios, milking machines, and so on.

(5) *Labor*.—The oldest independent federal commission in this group is a board whose job it is to select lists of employees for the federal government itself, where the positions come under the Civil Service system. The United States Civil Service Commission of three members is charged with the policies, standards, and organization of a merit system.

The Commission arranges for open competitive examinations for those applying for specific jobs in the classified service. To handle this phase of its work, the Commission has established regional offices in thirteen districts, which release information about the examinations, as well as supervise these examinations held in the key cities of the districts. Likewise within the jurisdiction of the regional offices are 140 rating boards and some 5000 local boards of examiners.

The Commission establishes lists of eligible candidates, based upon these examinations, and seeks to distribute the appointments equitably among the several states and territories. Other functions of the Commission have to do with probationary periods, the service records of federal civil service employees, investigations pertaining to the service, training courses, standards of classification and promotion, and retirement provisions.

Among the independent agencies regulating labor relations are several pertaining to specialized problems. The National Mediation Board of three members handles labor disputes between employees and railroad and airline companies. The Railroad Retirement Board of three members is charged with the pension and unemployment systems applicable to railroad employees. For this purpose it has twelve regional offices. The Maritime Labor Board of three members seeks to arbitrate disputes between maritime employees and their employers.

The most far-reaching commission on labor relations is the National Labor Relations Board. The powers given to this independent board of three represents further the assumption by the federal government of activities formerly left exclusively to the states and localities. It is a specific development of federal experience under the invalidated N. R. A., and in particular embodies the collective bargaining principle enunciated in Article 7A of the N. R. A.

The N. L. R. B. seeks to protect the asserted right of labor to bargain

collectively with employers over hours, wages, and the conditions of labor. The N. L. R. B. has especial legislative powers; for example, it may make regulations with regard to employees' elections of representatives. Its judicial powers are great: it may administer oaths, it may issue subpoenas and cease and desist orders to employers accused of unfair labor practices covered by the act.

The twenty-two regional offices of the N. L. R. B. conduct hearings and investigations concerning unfair labor practices. The findings of the regional trial examiners are subject to review, on appeal, by the N. L. R. B., whose order, in turn, is subject to review, on proper appeal, by a federal circuit court of appeals.

(6) *Social Welfare*—The extensive Federal Security Agency is a recent consolidation of Federal agencies devoted to education, health, and social security. Four of them were formerly attached to three of the administrative departments. Two had been independent commissions. And one was attached to an independent commission. As in the case of the Federal Loan Agency, the coordinator of this group is a single administrator, and the agencies continue their activities separately.

Two in particular provide employment opportunities for young people. The Civilian Conservation Corps combines the purposes of conservation of our natural resources and giving vocational training and employment to boys and young men. The director of the C. C. C. is assisted in administration and policy-making by an advisory council of officials representing the Departments of War, Interior, Agriculture, and the Veterans' Administration.

The National Youth Administration seeks to aid youths to remain in schools and colleges by providing funds for part-time work on projects approved by the N. Y. A. The administration of the N. Y. A. is of similar pattern to the C. C. C.: an administrator who works in conjunction with a National Advisory Committee. This committee, however, is not composed of government officials, but of thirty-five persons representing business, labor, agriculture, education, and youth. Each state has its own State Youth Administration, of a similar pattern, to aid in local administration of the N. Y. A.

The United States Office of Education, headed by a single commissioner, was transferred in 1939 from the Interior Department. This, tardily, is in line with the natural development of its functions in a changing society. Obviously its activities in fostering education in territorial areas lessened as states became established and grew strong in their own systems of education, although the amount of aid given to such bodies is still considerable.

Our industrial society has produced new educational needs, which the Office of Education seeks to serve. Vocational education, adult education, vocational rehabilitation of disabled persons, educational programs by

radio and movies: these are especial services of the Office, adjusted to modern needs.

The Public Health Service, under the direction of a Surgeon General, is a recent transfer from the Treasury Department. Besides coöperating with state and local authorities in all phases of public health, the Public Health Service engages in extensive publicity on matters pertaining to disease and health, utilizing all modern forms of publicity in its crusades. It engages in research, as well as furnishing medical treatment to those coming within its scope in 150 ports.

Most publicized and most far-reaching body in the Federal Security Agency is the Social Security Board, which prior to 1939 was conducted as a separate independent commission. Its activities are divided particularly among three bureaus.

Its Bureau of Employment Security has charge of the unemployment compensation plan. Here is clearest evidence of the growing concept that unemployment is a social hazard rather than an individual problem and can best be handled through combined group efforts. The public employment offices, formerly under the Labor Department, as the United States Employment Service, are now administered by this Bureau.

The Bureau of Public Assistance, under the Social Security Board, may serve as a sharp illustration of federal-state coöperation and relationship, as well as of the influence of the federal government on state legislation. To secure federal aid for the blind, dependent children, and the aged, a state must set up and administer patterns which meet the approval of the federal board.

A third functional division of the Social Security Board is the Bureau of Old-Age and Survivors Insurance. Here too is a social recognition of an economic problem in our industrial society which is greater than the individual alone can cope with. This form of social insurance involves an accumulation of a trust fund in the Treasury of the United States, from compulsory contributions by employers and by employees who are eligible to become beneficiaries of the old-age insurance.

Unlike the other social security activities of the Board, this last plan does not depend on state cooperation but is a direct relationship of the individual and the federal government. To administer the social security program and to effect state and local cooperation, the Board has established twelve regional offices in the United States, as well as territorial offices in Hawaii and Alaska.

Interesting evidence of interdepartmental organization to meet problems of social security which transcend a single departmental sphere of action is the Committee on Economic Security. This is an independent agency, outside of the Federal Security Agency, and is composed of the heads of the Departments of Labor, Agriculture, Commerce, Treasury, and Justice, together with the chairman of the Social Security Board. The

purpose of this committee is "to study the whole program of economic and social security and to develop an appropriate legislative program." It was established, not by an act of Congress, but by an executive order of the President.

(7) *Public Works*.—Another major illustration of government reorganization and consolidation of related agencies is the Federal Works Agencies. As in the cases of the Federal Loan Agency and the Federal Security Agency, the consolidated boards continue their separate functions but under the coordinating supervision of a single administrator.

There is not agreement in policy as to the extent that the federal government should participate in projects of a public character, such as the building and maintenance of roads and parks, school and other public buildings. Some feel that most of such projects are essentially local in character and should be locally financed. As a spur to employment and a stimulus to private industry, the New Deal broadened previous federal activities in the field of public works.

Some of these activities are well known to all Americans, particularly those of the P. W. A. and the W. P. A. In 1939 these two independent agencies were brought under the new Federal Works Agency. The P. W. A. has financed a myriad of public projects, such as hospitals, tunnels, streets, school buildings, bridges, city halls, sewer systems, jails, power systems, and flood control. It has operated through six regional offices in the United States and three in the territories.

The W. P. A. has financed countless projects to give relief and work to a vast army of unemployed, ranging from the elimination of insect and plant pests to dramatic productions and writing projects. It has operated through nine regional offices in the United States, and through separate field offices in the various states and dependencies.

The United States Housing Authority, formerly in the Interior Department, now under the Federal Works Agency, finances loans for slum-clearance and low-rent housing projects, in cooperation with state and local plans. This too seeks to be a spur to employment and a stimulus to private industry, as well as to provide public support in raising the standard of living of as much of the population as possible. To give this aid to the local housing authorities, the U. S. H. A. has established seven regional directors and offices.

The Public Buildings Administration, now under the F. W. A., is an amalgamation of activities formerly within the scope of the Treasury and Interior Departments. This agency is charged with the construction and maintenance of federal buildings throughout the United States. For this purpose it has eight regional offices, each in charge of a district engineer.

The Public Roads Administration was transferred to the F. W. A. from the Department of Agriculture. Its function is to construct and maintain

roads, particularly in connection with state highway departments, where federal funds have been appropriated. Its organization has fourteen district headquarters.

Administrative Reorganization

The condensed citations of the major functions of administrative subdivisions of the executive branch of the federal government, as given in this chapter and the preceding one, must leave the student with one clear conviction. He should readily see why every President in recent times has been burdened with the need of administrative reorganization and of clarification of functional policy.

Pressures against even the most obvious and simple readjustments of administrative organization have been huge—far greater than the average citizen has any idea. Any reorganization presumably should be for the purposes of a more efficient and better articulated and coordinated service. That will presuppose a shifting about of agencies, coupled with subordination of some functions and abolition of others. That means at least the prospect of jobs lost, prestige and powers curtailed, in some quarters.

Three general interest groups forcibly oppose such moves. The executive personnel quite naturally looks upon such with apprehension. One may fear the loss of his job. Another may fear demotion in rank, if not pay. Another fears transfer from activities and associations that have become familiar. And so on. Such will bewail the good of the service and the lack of knowledge of administrative problems shown by politicians. In this the bureaus, divisions, commissions, departments, and boards affected are likewise prone to feel their interests as vested.

The opposing political party may see in such efforts a move on the part of the chief executive to entrench himself and his party more strongly in power. It is realistically unwilling to believe the move is without self and party interest. It will probably therefore raise the cry of dictatorship.

The President's own party may oppose the move. His political advisers may view the positions concerned in relation to the patronage system. Contraction may offend retainers and constituents alike and weaken party strength. His advisers fear the cry of dictatorship the opposing party will be sure to raise.

Despite these pressures, some Presidents have made earnest efforts at reorganization. They recognize that many of the administrative agencies have just grown inexplicably like Topsy. They knew only too well that the original designation of jurisdiction and of location of an agency by Congress has often been whimsical and without administrative logic. In some cases it has been clear that a minor agency has grown faster than its major connection, with the result of the tail wagging the dog. In other instances there is considerable duplication and overlapping of activities and functions in various agencies.

Franklin D. Roosevelt has attempted a thorough-going revision of administrative organization and function, but has been strenuously, even vehemently, blocked in fundamental changes. The many instances of consolidations and transfers cited in these two chapters are but a portion of the changes he has effected; these help to reduce some of the confusion, but they do not go below the surface of fundamental administrative reorganization.

In 1937 President Roosevelt's committee of three experts in administrative management transmitted to him a comprehensive report of their research, together with changes recommended. These proposals were in the fields of personnel administration in the federal service, fiscal management, the independent regulatory commissions, problems of administrative management, the exercise of rule-making power, and the preparation of proposed legislative measures by administrative departments.

The committee's own summaries of two of their recommendations are particularly pertinent with regard to this chapter and the preceding one.

On the subject of civil service, the committee urges that we extend "the merit system upward, outward, and downward to cover all non-policy-determining posts; reorganize the civil-service system as a part of management under a single responsible administrator, strengthening the Civil Service Commission as a citizen Civil Service Board to serve as the watchdog of the merit system; and increase the salaries of key posts throughout the service so that the Government may attract and hold in career service men and women of the highest ability and character."

While President Roosevelt, by executive orders, has extended the civil service classifications to include some positions which were formerly filled by patronage, many have been disappointed at the slow progress of the merit system under him. The horde of alphabet agencies has been staffed by thousands outside the civil service system. Congress likewise has not fallen in line with the committee's suggestions on this point. The roots of the patronage system are tenacious.

With regard to the independent establishments, the committee advocates that we overhaul "the hundred independent agencies, administrations, authorities, boards, and commissions, and place them by Executive order within one or other of the following twelve major executive departments: State, Treasury, War, Justice, Post Office, Navy, Conservation, Agriculture, Commerce, Labor, Social Welfare, and Public Works; and place upon the Executive continuing responsibility for the maintenance and effective organization."

Several things about this recommendation will strike the student. The committee advocates a redistribution of the administrative activities and functions more logically among the several departments. To end the inconsistent and opposing patterns of decentralization and centralization in favor of the latter the committee urges that the work of the various

independent bodies be distributed among the appropriate departments.

Such a distribution would relegate most of the agencies to subordinate positions as bureaus within the departments concerned. This, it is hoped, would do away with much overlapping and duplication. It would bring some order into the confusion. It would make clearer and more immediate the lines of authority and responsibility. It would enable the Chief Executive to be the Chief Administrator his constitutional position requires.

Observe too that the committee would create two additional departments of cabinet rank: the department of Social Welfare and of Public Works. Many feel that President Roosevelt's new comprehensive agencies, under single administrators, are steps in that direction. It is to be likewise noted that the committee would change the name of the Interior Department to that of Conservation, as representing more accurately what is and should be the dominant function of this department.

The committee shares the opinions of some of the sternest critics of the independent or "irresponsible" regulatory commissions. It would separate the administrative and judicial functions of these bodies. The former they would give over to appropriate bureaus within proper departments, with the lines of authority and responsibility leading directly to and from the White House. The judicial functions would be handled by separate staffs. These would be attached to the departments concerned, for budgeting reasons, but would otherwise be independent, in order that their decisions may be impartial.

In its defense of this redistribution of functions, the committee points to the division of tasks in the Department of Agriculture as a justifying illustration. Because of the facilities of this department, its excellent administrative organization, and the prestige it has sustained, Congress on many occasions has given some of its bureaus powers involving rate-making and the quasi-judicial function, the committee demonstrates.

Administrative Law

These considerations bring to the fore comment upon the growing body of administrative law and the growing interest in a system of administrative courts.⁵ Many public officials exercise discretionary power. Even a patrolman must on occasion decide whether an offense has been committed and whether the person he is arresting in this connection may properly be taken into custody.

Licensing and tax officials, inspectors of various kinds: these and many others in the performance of their administrative functions may find their actions challenged as arbitrary, discriminatory, unreasonable, and even without constitutional authority. The vast and rapidly mounting number

⁵ For illuminating treatment, see L. D. White, *Introduction to the Study of Public Administration*, revised edition (The Macmillan Company, New York, 1939); also F. F. Blachly and M. E. Oatman, *Administrative Legislation and Adjudication* (1934).

of decisions handed down by the courts are developing into a separate subject-matter of law known as administrative law. This body of law concerns the constitutional limits of action and power of the administrative agent or body. It has to do too with the forms of relief against such administrative action. Finally, it deals with the problem of the finality of administrative orders.

Numerous and varied are the administrative bodies which have the power of adjudication. Such a federal court as the United States Customs Court is an independent administrative court reviewing the action of an administrative official, such as an appraiser. Some of the departments have their own boards of review, to which may be appealed the actions of certain administrative agents. It has been pointed out that the regulatory commissions are also administrative tribunals. These are but three of the different varieties of administrative tribunals in operation in the federal government.

In separating the judicial function from the administrative, in the regulatory commissions, and to formalize administrative law further, some advocate the establishment of a system of administrative courts in the United States, somewhat comparable to the Customs Court, and perhaps patterned on the French system.

We are coming to depend more and more on administrative action in protecting our property and person than on the older processes of law and litigation. Licensing and inspection of restaurants by authorized public officials serve us better than a suit for damages where the unclean conditions, unregulated, bring unhappy results, for example. As we lean more and more upon administrative regulations and discretion, so too must the character of protective review of such administrative action be adequate. To many, a correlative system of administrative courts staffed with experts in the field of review is felt to be superior to judicial review of administrative action in the established courts of law.

CHAPTER 62

PROBLEMS OF REPRESENTATIVE GOVERNMENT

The Electorate

The Constitution guarantees that the right of a citizen to vote may not be denied or abridged by the United States or any state on account of race, color, previous condition of servitude, or sex. In referring to voting for members of both houses of Congress, the Constitution says that such voters in each state shall have the qualifications that are requisite for those entitled to vote for the most numerous branch of the state legislature

Here again we find evidence of the compromise by the founding fathers between varied state practice and federal need. In those days some states had property qualifications for voting which those of property were loathe to see given up.

The state laws pertaining to suffrage have become so relatively uniform, however, that we may now speak more appropriately of "universal suffrage." The states agree that the person must be a citizen and at least twenty-one years old. They agree too that he must be a resident of the state in question, but they differ as to the length of time required. This residence requirement varies from three months to two years.

Some states stipulate certain educational requirements. These too vary. Some require a scant reading ability Others require at least an ability to sign one's name. Some require that the would-be voter explain a particular part of the Constitution. The degree of arbitrary discretion that these standards may give to a biased election official is of course apparent.

Some states require the presentation of a tax receipt, as for example a poll tax, before the voter can register. And he must register before he can vote. The states agree that criminals and the insane may not vote, although these classifications are subject to varied and confusing definition.

The severest critics of unworthy office-holders are too often persons who fail to use the most effective form of criticism: the vote. Even in a high-powered national campaign, where feeling runs high and which may be for weeks the dominant topic of conversation for most citizens, less than two-thirds of those who may vote, do.

Some condone the apathy and inertia represented by most non-voters. The mechanics of registration are said to be needlessly cumbersome in many instances In some cities a corrupt machine has dominated the polls even to the extent of physical violence, intimidation, and stuffed ballot-

boxes, effectively discouraging or even negating opposition or independence on the part of the voter

The number and frequency of elections, especially for local and state officials, do not increase his interest. The very size of the ballot may cause despair of intelligent selection. "One Chicago ballot contained 267 names of candidates running for 53 offices, not including presidential electors. . . . The New York Democratic primary ballot in March, 1912, was fourteen feet long."¹

The increase of direct legislation at the polls, as result of the operation of the initiative and referendum in some states, seems to retard rather than spur the interest of many voters, judging by the considerably smaller votes cast on such matters than for major offices. Frequently, this is result of disinterest in the issue, inability to grasp it, or deliberate or unpardonable ambiguity of phrasing.

The honest confusion of many independent voters in a campaign of vague issues and mutual recriminations, where it seems a case of the pot calling the kettle black, leaves them in such a "what's the use?" mood on election day that many of them stay away from the polls

As commonplace matters as illness, the demands of their occupation, lack of transportation, and the weather account for many absences. The last may figure even prominently in some local and state elections, particularly in rural areas in the spring. In fact, the urban Democrats in a rural Republican state may hope devoutly for rain on election day, to bolster their slender chances.

Party Machinery and Candidates

The role of the political party in every phase of American democracy is a constantly powerful one. The practices attending all aspects of party politics have taken on a force of firmly established custom. The Constitution is silent on the subject of this now vital institution. Even its carefully detailed procedure for electing the President has been modified by common acceptance of party operations. Thus we see again that custom may be stronger than even the Constitution

Ours is essentially a two-party system. There are other parties, but their national strength is weak and their staying power poor. To most Americans, campaigns and legislation represent strategic maneuvers of two great armies: the Republicans and the Democrats.

Both parties have vast nation-wide organizations which have considerable resemblance to each other. The operations of the party organization may perhaps be seen more clearly if we follow the career of a fictitious youth whom we may call Peter Doe.

¹ P. H. Odegard and E. A. Helms, *American Politics* (Harper and Brothers, New York, 1938), p. 718

At the point we pick up the "story," Peter has just graduated from the municipal high school. His family is unusually interested in the affairs of the city, so it is not surprising that he has already developed a curiosity with regard to politics. His father has been on the police force for twenty years and is now a Lieutenant in charge of patrol in one of the busiest precincts of the city.

Peter's favorite Uncle, Jim Doe, is an insurance broker, a bachelor, and frequently joins the family at supper. Since childhood Peter has been absorbed by these table conversations that often lasted past his bedtime. They have had to do with the many ramifications of city politics, because Jim knows even more about city hall than does the Lieutenant.

Jim Doe, at this stage of our account, is a new member of the Ward Committee of his party. For years he had been a precinct committeeman, which is the base of the party hierarchy. During all these years he had combined his insurance visitations among the five hundred voters in his precinct with arousing their zeal for the party's candidates for office.

A hearty, friendly man, Jim had in these years aided the voters in many ways. He found a job for this person. He arranged for the winter's supply of coal for that needy family. He helped a mother get bail for a son accused of theft. He persuaded a lawyer-friend to defend the boy, who could not afford counsel.

Further, Jim rounded up transportation for the aged and the infirm on election day. He contributed services and money to charitable and church activities in the precinct. He acted as his locality's buffer with city hall; if a voter in his district desired a vendor's license, Jim paved the way for him, or even saw the licensing official himself, if one of his "friends" considered his assessment too high, Jim took it up with the tax officials.

These and countless other neighborly services he performed with geniality and despatch. It is little wonder that he was the best liked individual in the precinct. Nor did his insurance business suffer thereby.

So successful was Jim in "carrying his precinct" year after year, by "bringing out the votes" that enabled his party to control not only that area but also the larger, surrounding units, that his elevation to the ward committee of his party was inevitable. In his case, he was elected by the precinct as its delegate, but it was a choice obviously approved by the party's central committee of the city composed of the chairmen of the various ward committees.

This election to the ward committee widens the scope of Jim's influence and ability to serve loyal members of the party, particularly since he will have more patronage now to distribute. Many seeking jobs on the city payroll will come to him for intercession: aspirant police-officers, clerks and stenographers in sundry departments of the city, building and other inspectors, janitors, workers in the sanitation units, and so on.

At supper at the Does, after Peter's graduation, Jim is discussing his own

plans for the future. He already has his eye on the chairmanship of the ward committee, which will not only put him in the party's central committee of the city, but will also make his prospects excellent of election to the city council as the ward's representative. Their city is of the pattern that is governed by a mayor and a council made up of representatives from the various wards of the city. If he is elected councillor, it will be his first official political post; to him it is an attractive thought. From there, who knows? Mayor, Congressman, even Governor. . . .

But Peter's future too is a subject under discussion at this earnest supper conference. As a small boy he had ambitions to become a patrolman, especially as the force became motorized. Later, however, both his father and uncle had agreed that it was better for him to plan on coming into his uncle's insurance office.

Now the family council has again shifted its opinion. If Peter is to enter politics—and none of them, Peter himself included, seems ever to have assumed otherwise—a re-examination of the route appears to them desirable. The father and uncle agree that the old path of ward heeler battering his way up by muscle, brawn, and nimbleness seems to be undergoing a change in their state's politics. There is no substitute for the training ground of the precinct, to be sure, in party politics, and none of them would even have considered it possible to become an office-holder except through the party organization. But both men now feel that additional training needs to be added to that continuing practical experience in the realities of vote-getting.

From the days of his first bicycle, Peter has participated in campaigns. He has distributed handbills proclaiming the special virtues of the party's candidates. He has taken tickets at party dances. He has sold tickets for boxing matches put on by the ward club.

Further, he has carried to poor families Christmas and Thanksgiving baskets, filled by sub-committees of the local organization. He has driven cars carrying voters to the polls. He has assisted, in small ways, the party workers at the election stations. He has acquired a store of practical experience in fundamental politics, even though he himself will not be eligible to vote for two years.

Uncle Jim stresses, at length, the increasing value of a college education "these days," as an aid in politics too. It is his suggestion that Peter attend the large, well-known university in the city, graduate from its law school, and enter the bar. Jim insists that Peter can continue his precinct activities and become known as a rising young member of the party.

Then, it is reasoned, under Uncle Jim's aegis, and with his own experience and acquaintance in the district, Peter will be ready for party candidacy. The parents and Peter believe this advice cogent, and Peter enters upon this general program. We cannot, of course, follow here the educational progress of this young man pursuing one of the conventional paths to

a political career. We may merely observe, in passing, that throughout his college and law school course he participates in organizational activities of the party as energetically as his studies may permit.

During these years he gives aid to the local party, particularly at elections, as helper, organizer, and speaker at rallies. His uncle has stressed the value of experience in making campaign speeches. Likewise, he is active in the ward club, both in its public affairs and in the private gatherings.

Upon admission to the bar of his state, Peter is taken into the local law office of the Hon. William Brown, the Congressman from that district. We suspect the helping hand of Uncle Jim in this, although Peter has made a good showing in law school and is of course by this time recognized by the elders in the local party organization as a most promising young man.

Uncle Jim, in the meantime, has made good his intention to become city councillor and is thinking of running for mayor of the city. Peter's father has been promoted to a captaincy. Soon after he enters the law office, Peter is groomed by the organization for his first joust, he is selected to run as representative from his district in the State Legislature. The party organization whips into shape behind him, the work of the precinct men and the ward heelers, with which he is so familiar, is tireless, Peter's own efforts are effective, and he enters the legislature.

We need not concern ourselves here with his legislative career. We are interested primarily in the stages of party organization, as evidenced in Peter, his uncle, and the others coming immediately within our view. At this point, several conventional paths face Peter, if he succeeds in his relations with his party and the public. In party politics of one state, he would progress slowly but steadily from the lower house to the State Senate, from the presidency of the latter into the office of Lieutenant Governor and then almost automatically into the Governorship, if his party remains in power.

Let us assume that ten years have passed. During this time Peter has been an energetic member of the lower house of the legislature. Because of his talents and interests, and upon the suggestion of his party advisers, he now decides to run for the state office of district attorney, or state's attorney, as it is called in some states.

At this point, his Uncle Jim is in his second year as mayor. He is now preparing to run for Congressman as the party's candidate in the place of Will Brown who has accepted a presidential appointment as judge of their federal district court.

National Convention Preliminaries

In the meantime, another presidential campaign has appeared on the horizon. Throughout the preceding winter the ward clubs buzzed with talk of national party politics as well as local. The National Convention to be held in the early summer is a focal point. During this time there is consider-

able activity in the party state headquarters concerning their choice of candidate for the presidential nomination. Estimates of strength and bargaining between segments of the party and rival areas of the state become keen.

Jim is especially concerned since he hopes to be his party's candidate for Congress in this presidential year. And Peter is more alive to the scope of party politics than ever before. At the state convention of the party, held in their city, Jim is elected as one of the delegates to the national convention and Peter manages to be chosen as one of the alternates.

The allotted number of votes at the national convention of their party is twice the number of members from that state in the two branches of Congress. Their state organization has decided to send twice as many delegates as they are entitled to, which means that Jim and each of the others will have half a vote; Peter of course will not have a vote at the convention, unless he is called upon to take the place of a delegate.

The state organization has agreed to back the candidacy of their governor, Snow, at the convention, as he is their "favorite son" and each state organization aspires to put one of its own in the White House. But it is agreed that the delegation will be left free to swing their votes to some more likely candidate if, as the balloting progresses, it transpires that Governor Snow's chances for the nomination are non-existent. In this way, at least, the state organization may hope to retain some bargaining power.

Peter hears from time to time of deals being made with other state organizations in support of Governor Snow's candidacy. He recognizes that these overtures are probably being made by the chairman of the state committee at the instigation of the "boss" of the state, for in his state, as in most state organizations, the state chairman is not the dominant power of the party in the state.

An extensive nation-wide speaking campaign is drawn up for the Governor, throughout the spring. In this the party is following the modern trend, of mobilizing public opinion as much as possible even before the convention. Governor Snow demurs a bit at that since he holds the older notion that such pre-convention barnstorming is undignified, particularly for the high office of the presidency, but the realistic leaders persuade him that it is a high-pressure age and that rarely does the office seek the man. Meanwhile, the state organization is busy accumulating campaign funds, with an energy that will increase throughout the summer.

On the train to the convention city, Jim and Peter had a foretaste of the excitement and gaiety which awaited them. The bulk of their state delegation was on the train, and other delegations got on en route; with all, happy groups of followers tagged along. While the groups made merry in the coaches, smaller knots of men talked earnestly in smoke-laden compartments debating prospects and rehearsing strategems. It was not unlike a gay football crowd anticipating a keen game and a swirl of parties, while

scouts, coaches and managers plotted and planned apart; except that in both cases the major manipulators were probably already on the ground.

When they arrived at the convention city, Jim and Peter caught for the first time the full lilt of the carnival spirit. The delegations' bands swung into action; the delegations and their no less exuberant followers marched to their hotels, waving the colors and emblems of their state, party, and favorite son. At their hotel they were engulfed in a shouting horde, with more bands, delegates bedecked with ribbons and badges swarming the lobby. It was the most exhilarating atmosphere either man had been in. Peter felt that it even vied with the most excited football crowd he had seen, and well it might, for politics is the oldest and greatest American game.

But Peter observes that the leader of his delegation is unaffected by all this enthusiasm and that he disappears quietly for hours at a time in a suite in the hotel. From even his own scant experience with the state organization and from what his uncle informs him, he gathers that here an inner group is perfecting the stratagem to be employed at the sessions of the convention. Here, he realizes, the bargaining is going on, and state delegations are being lined up, so far as possible, behind some single candidate.

The National Convention

The convention opens. It meets in an enormous auditorium, with the blocks of delegates massed on the floor with their respective banners and signs, and with thousands of spectators packing the galleries. The noise of shouts, songs, bands of the various groups is deafening, as a democracy unlooses one of its gayest events, the nomination of a President of the United States.

The vast audience only intermittently quieted, there follow prayer, the nomination of temporary officers, a tedious and not too significant "key-note" speech by the temporary chairman, and the roll-call of the states. Committees on credentials, permanent organization, rules and order of business, and party platform are announced. Then the delegates return to their mardi gras. And the real leaders resume their negotiations.

On the second or third day of the convention, after the committees have reported, Peter listens to the adoption of the party platform. He is fully aware of its importance as the banner under which the campaign will be fought. He realizes too the necessity for broad generalizations which can mean all things to all voters, lest any significant bloc of voters or section of the country be alienated.

Drawn up often with frenzied speed by a committee which may have wrangled sleeplessly over it throughout several days and nights, the platform may range in size from that of 1600 words, of the Democrats in 1932, to one of 9000 words, of the Republicans in 1928. It will include numerous "planks," representing the stand of the party with regard to matters as

diverse as mining and the merchant marine. In 1924 the Democrats had a platform of fifty-one planks.²

Jim, however, warns Peter not to worry too much about the platform. He reminds Peter that campaigns are really fought between men and organizations and seldom on real "issues." "As a usual thing, only a few sticklers care anything about a platform, the vast majority of delegates agreeing with the hard-headed politician who remarked that 'platforms are to get in on, not to stand on.'"³

Choosing a Presidential Nominee

For Peter the real excitement begins on the third or fourth day when the balloting starts. As each state responds, alphabetically, to the roll, its choice of candidate is named by its delegation, with the most exuberant demonstration its parading boisterous members, its out-dinned band, and its followers can manage.

A candidate may be agreed upon at the first oral balloting. But if there are many loyally supported "favorite sons" and the bargaining behind the scenes has not moved smoothly, then the balloting may go on for days. One member of his delegation told Peter of the Democratic Convention of 1924 when it took over a week of balloting and over one hundred ballots, each by way of the tedious roll-call state by state, before the exhausted delegates agreed upon the nomination of John W. Davis.

As this phase of the convention continued, an older political craftsman explained to Peter the objections of the party to the various candidates offered. One came from a small New England state and was little known nationally. Another was earnest, capable, but of poor personality. Another was too closely identified, as a corporation lawyer, with the "vested interests" and would cost the party labor and perhaps farm votes. The religion of one and the highly publicized divorce of another would lose many votes of various church groups, although both men were of outstanding caliber.

Still another, the "old timer" told Peter, was backed in his state by a powerful, corrupt machine and would alienate large groups of citizens, who would be aroused by the opposing party's denunciation of wickedness in high places. And, finally, another was a prominent member of the United States Senate who had for years taken a strong stand on certain highly controversial reform measures; while he might therefore win some votes from advocates of those measures, he might well split the ranks of the party, thereby dooming it to defeat.

This old realist predicted that no one of these men would be nominated

² E. M. Sait, *American Parties and Elections*, revised edition (D. Appleton-Century Company, Inc., New York, 1939), p. 566.

³ *Ibid.*, pp. 567, 568, quoting sentence from A. W. Dunn, *From Harrison to Harding*, Vol. II (1922), p. 196

He also pointed out those candidates who were really straw men, behind whom their delegations could delay decisions strategically until the bargaining assumed sharper proportions. Thereby these delegations could gain the psychological advantage and prestige of swinging to the ultimate nominee at a moment which might clinch for him the election. Such leaders of maneuvers would expect such a nominee to be particularly grateful to them; upon his election, his gratitude could manifest itself in cabinet or other major appointments and liberal patronage. Peter watched, tensely, these predictions materialize, as their party chose its nominee for the presidency.

The convention had become deadlocked, with the manipulators unable to agree, and the balloting droned on wearily. Finally, a "dark horse" emerged, a neutral figure in whom no major faction had serious complaint and served as a compromise upon whom ultimately all could in desperation agree. As Professor Sait recounts an earlier contest: "In 1852 Pierce was ignored till the thirty-fifth ballot, when Virginia gave him fifteen votes; on the forty-eighth, he had only fifty-five votes; and then occurred the 'stampede' which made him the choice of the convention on the forty-ninth ballot."⁴

In the balloting for the nominee for Vice President which followed, Peter observed curiously the almost apathetic despatch with which the delegates acted as though they felt their job was over and they were impatient to get home, back to their affairs, and into the campaign. It naturally delighted him too to see the choice fall on Governor Snow, who, while not an outstanding candidate, did however come from a section of the country and a wing of the party considerably removed from those the presidential nominee represented.

The Campaign

The next four months were a frenzy of activity for Peter and his uncle, and the thousands of loyal party workers of his city. That his uncle was running for a national office and he for a state one, made this campaign strenuous and exhilarating.

Because of his own campaign he confined his efforts to his own district, which was smaller than his uncle's. But they both spoke often at the same rallies and on the same radio programs, and both were aided by the larger organizations of the party.

The precinct and ward organizations were active behind both, as well as for the other candidates of the party for public office, urging the voters to vote a straight party ticket. Hundreds now were busily doing the "leg work" which both Peter and Jim had for years done in their own turns.

The state organization loaned speakers, sent in printed literature. The

⁴ *Ibid.*, p. 588.

national organization helped out in Jim's congressional district with funds, literature, and even speakers of some national fame. Data and statistics on his opponent's earlier career in Congress and recent activities on a federal commission were assembled for Jim by the national organization, to be used in the campaign.

The leading newspapers of the city "came out" for Jim and Peter. They printed their major speeches in full. They gave favorable location to advertisements run by the local party committee and to announcements of the candidates' radio schedules. Even their staff cartoonists aided with favorable drawings of them and burlesqued depictions of the opposing candidates. As well, they along with at least five thousand other newspapers throughout the country, printed "canned" editorials, political news material, and cartoons sent from the campaign office of the national organization, lauding the party's candidates for President and Vice President.

The national committee of the party distributed millions of lithograph pictures of the presidential nominee and Governor Snow. Millions of copies of speeches, documents, pamphlets were likewise dispensed to the local committees throughout the nation. The national organization spent over a half-million dollars for radio broadcasts. It spent over one hundred thousand dollars for a special train to carry the presidential nominee and his retinue on a barnstorming trip over the country.

When this special train, "The American Victory," stopped in their city, both Jim and Peter were warmly greeted by the party's choice for Chief Executive and had their photographs taken with him and Governor Snow on the observation platform, by press and news-reel photographers. At this time, Peter had both national figures autograph his already dog-eared copy of the campaign text-book, a pocket manual of several hundred pages, giving a vast store of information about the party, issues, platform, candidates, as well as practical aid on questions troublesome to the "stump-speaker."

Campaign Funds and Forbidden Practices

The amount of money being spent in the national campaign being discussed is difficult even to conjecture. Both parties certainly spent a total of ten million dollars before its end. But with the unreckoned expenditures by local workers and others, the gross sum defies calculation. Some would estimate it as well over twenty-five million dollars.

Contributions come from many sources. Loyal workers and members of the party contribute valuable time, talent, services, as well as considerable money to the war chest. A known and sizeable source of income too has been levies by the parties upon office-holders, sometimes in large amounts. Special interests often contribute heavily; labor groups and business groups alike may feel they are buying "insurance." Dinners and other social functions may be given with a high tariff to the persons attending.

Efforts to reduce corrupt practices in elections have been sporadic. The federal laws are weak, in lack of a real enforcement agency responsible for this matter. Moreover, since they apply to elections and not to primaries,⁵ and of course only to national elections, the evils are hard to isolate. In the summer of 1939 the Hatch Act was passed to reduce the problem of exploitation by politicians of those receiving money from the federal government in relief, and to prevent those on the federal payroll from engaging in politics however slightly. In the summer of 1940, a second Hatch Act extended this prohibition to include even state employees any part of whose wage might be construed as coming from federal funds.

The requirements pertaining to a published account of the candidate's campaign expenses have limitations. Both the federal and state laws permit such important exemptions as personal expenses, printing, telephone, telegraph, stamps, etc., which may more than exceed the legal limit. The usual rule is that these statements need not be published until after the election, when the damage has been done and when public apathy has returned. Moreover, the money may be expended by local and other committees without the candidate's precise knowledge.

In addition to some effort to control the maximum campaign expenditures by candidates and to give these amounts publicity, albeit delayed, the federal and state laws seek to forbid certain undesirable practices. Bribery is universally assailed, and yet continues in devious ways. The tangible factors influencing one's vote are hard to identify. The gratitude for past favors, the hope of future advantage, the charm of a friend or "good fellow": these may motivate choice as forcibly as the factor of immediate gain.

Likewise forbidden is the promise of a job in return for a vote, but so long as the patronage system clings, especially applicable to lesser jobs in cities, then the legal hope of a job will be as influential as the illegal promise of one. The laws controlling the participation of public employees in campaigns extend in some instances to questionable limits, bordering on violation of the person's rights of speech, assembly, and suffrage.

Campaign Issues

Burning issues usually do not emerge in campaigns, however heated these may be. Emotion is high. Each side assails the caliber, statesmanship, personnel, and occasionally even the integrity of the other. But rare is the campaign in which the two major parties take clear-cut sides on even a single dominant issue.

During the 1920s, the outstanding social issue was prohibition. Sentiment against such legislation of morals was high. The combined efforts of law enforcement agencies were proving futile to cope with the amount and

⁵ *Newberry v. U.S.*, 273 U.S. 536 (1927)

size of the crime loosed and the vast horde of ordinary citizens aiding and abetting the violation of the liquor laws. Yet neither party dared or chose to come out on the issue of its repeal, throughout the decade, until a major depression and an aroused public opinion forced the issue.

The comprehensive scope of the two parties forbids heroic championship of fundamental issues. As evenly divided in strength as both are, each is necessarily bent upon enlisting votes. It can ill afford to alienate any considerable bloc of voters.

A sharp stand on a controversial subject may do just that. To appeal to conservatives and liberals, to the west, the north-east, and the south, to labor and business, to rural and urban populations, to all religious creeds, to both sexes—the party must hedge, straddle, evade. Its organization is too vast; it has too much at stake.

Role of the Third Party

It is from the third parties that defense of new and vital issues comes. The third party may be one of three general types. It may be a continuing political party catering to a particular social and economic group, and advancing a definite program of reform, as in the case of the Socialist Party.

On the other hand, the third party may be formed as the result of a cleft in a major party, where a minority group challenges the leadership and program of the party, as in the case of the Progressive Party of 1912. Or it may be a minority interest group seeking to effect specific legislation which the major parties have avoided, as in the case of the old Prohibition Party.

Third parties suffer from some of the disadvantages of reform groups in municipal politics. In the public mind they may be considered as meddling busy-bodies noisily interfering with the traditional contests to which the average citizen is comfortably adjusted. Likewise it may be argued that the average citizen even in a democracy is not readily aroused over abstractions and issues. Slogans, campaign cries, a stirring voice and personality, or aroused fears or prejudices, yes, but thought-requiring evaluations, no.

Third parties lack, usually, the skilled professional leadership, funds, and organization which the major parties have and which are necessary to win and keep public offices. They may have the zeal, but they lack the staying power even when successful.

Their success may come from a splitting of the ranks of one party and effecting an unholy alliance with the other, for the strategic advantage of both. More often, when they have gradually won over a sizeable political following to their doctrines, one of the major parties incorporates a milder version of their goal in its platform and acquires accordingly the votes accruing.

Third parties, however, have a valuable role in a two-party democracy. Their "nuisance value" is high. Through them the public is kept aware of

the similarities and evasions of both major parties. The third party also may hold a balance of power, trading or threatening with its votes, first one and then the other party.

Likewise the third party provides a sounding board for the major parties with regard to public sentiment upon an issue which may not yet have assumed the proportions of national politics.

Not only may the third party stir the major parties out of torpor and lethargy, but it may also serve to arouse a growing portion of the population with regard to social, economic, and political reforms and to reduce some of the cultural lag present even in the most active democracy. This dramatization and testing of issues alive with meaning serve to keep fresh the growth and structure of an organic government.

Finally, third parties are in themselves an embodiment of a fundamental democratic principle of freedom of thought and independence of action, and so are invaluable adjuncts to our conventional two-party system.

By direct and indirect action, third parties have sped forward many modifications of our social, economic, and political pattern. Direct election of United States Senators, the federal income tax, railroad regulation, woman suffrage: these, among others, they have seen accomplished. The student, however, must be reminded that in such instances the third party is acting with the comparable effectiveness of a pressure group which gains its ends through the orthodox party structure without setting up an opposing political organization.

In a scattering of states five minority parties emerged with presidential candidates in the 1940 election. These were the Socialist, Socialist-Labor, Communist, Prohibition, and National Greenback parties. Their combined vote was so slight, in comparison with the unusually large vote mustered by the two major parties, that but passing notice, if any, was given their showing even by the largest metropolitan newspapers.

"We Want Willkie!"

Two banners hung across the short, quiet main street of a picturesque, old New England town in the closing days of the 1940 campaign. The banners were of identical size, coloring and letter-style. They were presumably made by the same sign-maker for and hung by the local committees of the two major parties. One shouted, "We Want Willkie." The other proclaimed, "We Need Roosevelt."

On November 5, 1940 it is estimated that nearly 27,000,000 voters determined that the country needed Franklin D. Roosevelt for a third term, and that over 22,000,000 wanted Wendell Willkie for their nation's President.

It would appear that Wendell Willkie, a public utility executive who had never held public office and who a few months before was unknown to millions of voters, was nominated by largely the insistence of the rhythmically stamping galleries at the Republican National Convention, whose

steady drone of "We Want Willkie" shouted down the efforts of official delegates to conduct the sessions along conventional political lines. It would appear that Franklin D. Roosevelt was re-nominated for a third term by the Democratic National Convention with directed, steam-roller effectiveness and organization.

For the Republicans, Charles L. McNary, the Senate minority leader and exponent of agricultural legislation, seemed a happy and prompt choice as party nominee for the Vice-Presidency. For the Democrats, mutiny threatened over the contest for a Vice-Presidential nominee, a post normally assigned with casual despatch, until the party finally acceded to President Roosevelt's own selection, his Secretary of Agriculture, Henry A. Wallace, a son of the Secretary of Agriculture under Republican President Harding.

The campaign was hard-fought, in the forceful American tradition. For over seven continuous weeks Wendell Willkie stormed over the country in a special train, covering nearly nineteen thousand miles, making around six hundred speeches from the train, in auditoriums, and over the radio, hammering away at New Deal "excesses," unemployment of men and industry, and the third term. President Roosevelt made a series of "non-political" speeches at strategic points, and in the closing days five strong campaign speeches stressing the record of the New Deal in social legislation and the world crisis. Many prominent leaders in both parties declared for the other party's candidate. Both parties were agreed in the need for speed in arming for defense.

The election broke several records. More people voted than in any previous election in the nation's history. More people voted for Mr. Willkie than for any other Republican candidate in the nation's history. The disproportion in the electoral votes, in ratio to the comparative closeness of the popular votes, led to a flood of letters "to the editor" urging revision of the electoral system. Within a week, after speeches on both sides calling for unity and the healing of political wounds, the nation had returned to its favorite radio programs and its customary routine with a naturalness characteristic of American politics and society.

The following tabulation of the results of the last six Presidential elections is taken from the New York *Times* of November 10, 1940:

	<i>Popular Vote</i>	<i>Electoral Vote</i>
1920: Harding, Republican	16,152,200	404
Cox, Democrat	9,147,353	127
Republican plurality	7,004,847	277
1924: Coolidge, Republican	15,725,016	382
Davis, Democrat	8,385,586	136
La Follette, Progressive	4,822,856	13
Republican plurality	7,339,430	246

		<i>Popular Vote</i>	<i>Electoral Vote</i>
1928	Hoover, Republican	21,392,190	444
	Smith, Democrat	15,016,443	87
	Republican plurality	6,375,747	357
1932:	Roosevelt, Democrat	22,821,857	472
	Hoover, Republican	15,761,841	59
	Democratic plurality	7,060,016	413
1936.	Roosevelt, Democrat	27,476,673	523
	Landon, Republican	16,679,583	8
	Democratic plurality	10,797,090	515
1940:	Roosevelt, Democrat	26,913,917*	449
	Willkie, Republican	22,067,679*	82
	Democratic plurality	4,846,238*	367

In 1920, the Democrats carried eleven states, all in the South. In 1924, they carried twelve states, all in the South. In 1928, they carried six southern states, and Massachusetts and Rhode Island. In 1932, the Republicans carried four New England states, Pennsylvania and Delaware. In 1936, they carried Maine and Vermont. In 1940, they carried eight middle West states, Vermont and Maine.

* Estimated, pending official statement.

PART XIV

Politics in a Democracy

CHAPTER 63

POLITICS, OR WHO WANTS WHAT

"I am not a politician, and my other habits are good"¹ This statement represents the attitude of many people in the United States today. The term "politician" has come to have a bad meaning, and politics is frequently viewed as a somewhat disreputable occupation. Theodore Roosevelt's friends and relatives tried to dissuade him from entering upon a political career on this very ground, and no doubt many persons are driven away from public office by this manner of thinking.

In spite of this attitude politics is in reality no more than the process by which public policies are formulated. Governmental action is the product of a clash of forces, interests and desires. All people want something from the government. At some time or other everybody looks to the government for a satisfaction of his desires, whether they be that the Federal Communications Commission halt the jazzing of the classics over the radio, that their taxes be lowered or that they not be punished for a violation of some law. People are always knocking on the politician's door. They are constantly asking the government to do something or to stop doing it. People who want things try to get the power of the government on their side in order to be able to accomplish their objectives against the opposition of other people who object to the desired activity.

Accordingly, the politician is the instrument through whom governmental policies are established. In giving to people what they want he performs services for them. For this reason some people consider him to be a sort of "broker". In reality there is little difference between the governmental official and the people not in office. Both influence the activities of the government. Just as people want the support of government for the accomplishment of their demands so do governmental officers want the support of people. Governmental agencies, courts, commissions and bureaus, legislatures, executives and political parties which want to establish certain governmental policies try to get enough support from enough people to enable the desired change to be made.

¹ E. B. Logan, ed., *The American Political Scene* (Harper and Brothers, New York, 1936), "The Politician and the Voter" by J. T. Salter, p. 90

Pressure Groups

The gasoline of the governmental machine is to be found in the groups into which the people of the United States divide. These groups are frequently called pressure groups. The 130,000,000 people in the country do not think or act as one public. This is due to the fact that while everybody wants something from the government all people do not want the same things. Instead, they divide on all questions into a variety of groups which may be nearly equal or one of which may be overwhelmingly large and powerful. For example, on questions involving governmental action in employer-employee relations, the groups pro and con are often quite equal, whereas in regard to governmental suppression of vice or support for one's country in time of war the "pro" group is stupendous in comparison to the opposition.

The number of pressure groups is large and constantly changing. It is impossible to state accurately the number or to list the names of all of them, although some collections have been attempted. About all that can be done is to sketch the political scene by showing the great variety of groups, the techniques which they use in trying to influence the government and the interdependence between the groups and the government.

The most obvious pressure groups are those which possess such definite characteristics as organizations, more or less definite programs, leadership and treasuries. Examples would be trade associations, chambers of commerce, agricultural organizations, labor organizations, professional associations, the organs of government, the political parties, religious and fraternal and sectional interests and groups based on sex or age. Some of these try to protect the interests of their members on all governmental questions in which they believe they have a stake as can be seen in the Federal Farm Bureau, the American Federation of Labor, the teachers associations, the Republican and Democratic parties, the American Medical Association, the American Bar Association and the National League of Women Voters. These groups are sometimes called "general purpose" pressure groups. Other groups are interested in only a few objectives and do not take a stand on many governmental policies. They are frequently called "special purpose" organizations. Examples would be the American Legion, the Townsend Old Age Pension Group, the American Youth Congress, the New England Council, trade associations such as the Apple Growers or the Florida Citrus Fruit Growers Association, Taxpayers Leagues, the Catholic Purity League, Audubon Societies, Fish and Game Associations and the Anti-Saloon League.

It would require too much space to describe in detail any of the programs of these groups. Their desires and the things for which they strive can be illustrated in general terms. For example, the political parties are primarily interested in winning elections and getting their members in

office. For the most part the party platforms consist of the demands and desires of the other pressure groups whose support the party hopes to secure in its all-important task of providing the governmental personnel. The economic interest groups, made up of business men, laborers and farmers, are particularly interested in the economic policy of the government. They are active in trying to influence the activities of the government on foreign trade and on tariffs, on government aids for and regulation of business, agriculture and labor and on social legislation. For example, these groups have been and are active in attempts to influence the government's treatment of unemployment and relief, in approval and disapproval of the Reciprocal Trade Agreements, on the enactment, enforcement and modification of the Wagner Labor Relations Act, on government regulation of advertising in the protection of competitors and of consumers and on government aid for the helpless and aged through pensions, annuities and subsidies. The basic idea for the National Industrial Recovery Act which was adopted by the New Deal came originally from the United States Chamber of Commerce. The original plan of the AAA was drawn up in conferences between the officers of the Department of Agriculture and the leaders of farm pressure groups. The American Legion has been extremely effective in securing bonuses and pensions for veterans, special privileges for them in securing government jobs, in laws requiring teachers in state-supported schools to take oaths of patriotism, and in suppression of groups which have political and economic ideas not altogether orthodox in the eyes of the Legion. Groups of the aged people have fought for years to get government aid for indigent aged people. The Youth Congress has been a strong supporter of government assistance for education and the National Youth Administration. The Purity League is active in the fields of Morals, supporting governmental suppression of prostitution, prohibition of the traffic in contraceptive information and devices, and censorship of literature, the theatre and the moving picture. The sectional pressure groups can be illustrated very nicely by the present dispute between New England and the South over railroad freight rates. Both sections of the country have organized to secure preferential rates from the Interstate Commerce Commission. The New England Council wants the Commission to fix higher rates for southern freight than for northern freight and the South wants the Commission to require the railroads to charge them less for shipping their goods to the northern markets. Fish and Game organizations and Audubon societies have actively supported governmental protection of American wild life, the regulation of fishing and hunting and the expenditure of money to provide a stock of fish and game for the sportsmen.

So obvious are the foregoing groups that many people consider only these groups to be pressure groups. This is inaccurate. Among the pressure groups must be included those amorphous groups of individuals

who believe or act alike on particular questions without being joined together in any organization, who do not employ lobbyists and other individuals to represent their interests, and who do not possess treasuries to be used to further their aims. A considerable influence upon the policies of government is exercised by these indefinite groupings of individuals and for that reason they must be called pressure groups also. Among them can be found the independent voters, the "first" voters, the "liberals" or "conservatives," "isolationists," the "war party" and the followers of particular governmental characters such as a Hoover or a Roosevelt, a Senator Glass or a Senator Borah. The consumer and conservation movements of the past have been very largely pressure groups of this kind.

The Nature of Pressure

The word "pressure" is a bad word. To many people it implies the application of force to compel one to do that which he does not want to do. The word does mean that but it means more than that. In government it has come to mean any influence on the formation of policy. And this includes those cases where governmental officers want to do those things which pressure groups desire. As a result of this connotation of the word, it is probably more accurate to call these groups "interest" groups rather than pressure groups. Occasionally an officer attacks a pressure group for bringing pressure to bear upon him. If these attacks are analyzed, however, it will soon be seen that his objection is only against efforts to induce him to do what he does not want to do or to prevent him from doing what another pressure group, with which he is in accord, is urging. He does not look at his agreement with a group as partaking of the nature of pressure. This can be seen in a recent attack by Secretary of State Hull against the sugar lobby which was fighting for more thoroughgoing tariff protection in opposition to Hull's pet reciprocal trade agreements policy. In his mind the sugar people were exerting pressure upon him but he did not consider group support for his policy as pressure.

Likewise, an officer does not consider the pressure which he exerts upon other officials or upon interest groups to be "pressure." It may be that he rarely thinks of it or at most he is not opposed to the pressure of that kind. Accordingly, in a recent speech Senator Tobey of New Hampshire, then a Representative, castigated President Roosevelt for using means at his disposal to try to influence Congressmen to vote favorably upon certain legislation which the administration desired to see adopted. Later in the same talk he told how he had received requests from some of his own agricultural constituents for more aid from the Department of Agriculture and how he tried to induce it to satisfy their desires. Senator Smith of South Carolina found himself recently in the same position. Having attacked the Administration for its pressure upon him and Presi-

dent Roosevelt for having tried to secure his defeat in an election he tried to induce the Department of Agriculture to increase the benefit payments to cotton farmers, many of whom are to be found numbered among his constituents, vigorously criticising the Department officers and threatening them with Congressional punishment when they failed to respond to his demands.

It must be remembered that whenever the government acts it always does things for some group and against others. On most political issues there are more or less powerful groups on both sides of the question. There were many supporters for and against the Cash and Carry Neutrality law and, should it be modified in the future, there will be divided opinion on that question. In fact, it seems safe to say that no revision will even be attempted, let alone be successful, until it is desired, if not demanded, by some interests. Even in what appears to be so clear a matter as governmental legislation and police action against vice, the government is carrying out the desires of many groups and is running counter to the program of such groups as gamblers, organized gangs of criminals and the prostitution ring.

The important question, therefore, is for and against what groups shall the government proceed? In making this decision the officers may be influenced against their desires or convictions by the pressure brought to bear upon them. Probably in most instances, however, officers make their decisions without being so influenced by obnoxious (to them) pressures and, in fact, many act against such obnoxious groups. But whatever they do they are most certainly corresponding to the desires of some group or other. It should be made clear that interest groups in the society may influence governmental policy without making themselves objectionable to the officers. Accordingly, the mere desire of a group may amount to pressure in the sense that it may affect the officers' decision on how to act.

In a legislative committee meeting a bill is called up for consideration. A member of the committee remarks that such and such an organization wants the law and he thinks it ought to be approved. There appears no group in opposition and the bill is accepted. In many instances the mere expression of opinion by the leaders of a well-known pressure group or the mere adoption of resolutions in conventions of trade associations or of labor organizations may influence the attitudes or actions of governmental officers.

At times an officer's decision may be determined by his estimate of the size and political power of a pressure group. Therefore, groups try to present the strongest possible front to the officer and a vigorous, vociferous group often gives the appearance of considerable strength. One of the most difficult tasks of a governmental officer is to decide whether that strength is real or illusory. Herein lies one of the reasons for the importance of letters to the government. Pressure groups always try to get

as large a mail as possible as a means of showing their strength. Officers are interested in the mail they receive from constituents and others because it is a means they have of measuring the strength of demands made upon them. They try to decide from their mail which way the country is moving on the issues of the time. In this respect form letters and signed petitions are likely to carry less weight than personal communications. There is good reason for this. It is too easy to send a form letter or sign a petition. They tend to be evidence of the initiative and thus of the interest of a few who do all the work. On the other hand one who goes to the trouble to send a personal communication shows enough interest to overcome the inertia in writing. During recent times the use of the mails has reached almost big business proportions. On all sides the individual is urged to "write to your Congressman." The greatest extent of this development seems to have been reached on the fight over the Public Utility Holding Company Bill when its opponents sent telegrams wholesale, signing names taken out of the telephone books. That activity, however, turned out to be a boomerang. The hoax was discovered and as a result the influence of that pressure group hit a new low in its experience.

In judging the size of the pressure groups officers have many other bases for judgment, the important facts being that they are rarely sure and that often it is necessary to make a decision which, if wrongly made, may have bad consequences for them. One certainty is that the strength of a demand for particular action cannot be judged solely by the vociferousness of a group. Often that depends solely upon financial resources, or upon aggressiveness or upon a control of the means of communication. Also, a group's claim to its own size and popularity is not always reliable. It is known that groups frequently exalt their own influence and make exaggerated claims. Also, there have been examples of fictitious or fake groups such as an alleged farm or labor organization which is discovered to be no such thing. There have been cases of business men creating such organizations, with fictitious membership rolls, financed by themselves and set up to purport to speak for farm or labor interests to the advantage of the business men.

A more reliable method of determining the political power of a group is prior experience with it. In the case of many established organizations it is known, within limits, what number of people the group represents. One defect with this judgment is that the leaders may not be speaking for the members and supporters of the group. Two examples would be the failure of John Lewis to deliver the organized labor vote in Pennsylvania in 1938 and his inability to carry his own miner's union against Franklin D. Roosevelt in the 1940 union convention. Also, President Roosevelt failed to show popular support in his efforts to induce Congress to adopt his plan for reorganization of the Supreme Court. Another defect in this method of evaluation is the uncertainty of the support that a well-known

organization may or may not develop on particular issues. In judging this the officers often get a great deal of assistance from the party organizations and workers in the local communities. They make it their task to watch carefully the general trends of opinion. They have means of finding out the effectiveness of attempts to develop support from people not formally members of the group and their conclusions are often very reliable.

Interdependence of Government and Group

As a matter of fact governmental officers are anxious to know what people are thinking and what they want the government to do. How often have we heard the statement that a particular politician has both ears to the ground? The very idea of any such statement is that he is trying to find out in which direction the dominant social and economic forces of the day are moving, and the reason he wants to know is to enable him to move in the same direction. Likewise, we often hear from the newspapers that a particular proposal for governmental action is meeting with success or failure in the legislature because the legislators have just returned from home and while there had discovered the reactions of the groups in their own constituencies to the proposal. All such officials were doing was to grant these political forces what they wanted. Many other bits of evidence can be found to support the proposition advanced here. Officials frequently welcome letters from constituents and try to find out from these letters what course of action they should take. Legislators, executives and administrators hold frequent conferences with the representatives of the pressure groups—some at the initiative of the groups and others at the request of the officer—in the attempt to discover what the groups want from the government. Another very interesting bit of evidence is to be seen in the efforts of governmental officers to foster the organization of pressure groups and to facilitate their contacts with the government. All officials are aware of the fact that any group can express itself much more effectively and articulately through an organization than otherwise. Accordingly, the trend toward the formation of trade associations was encouraged by the United States Department of Commerce. That Department also recently attempted to foster an organization of "little business" into a group of its own. The attempts of the national government to eliminate the present schism in the ranks of labor and to achieve peace between the American Federation of Labor and the Congress of Industrial Organizations are other examples of this desire of governmental officials.

Government also facilitates the expression of the desires of the pressure groups by opening up ways through which they can express themselves. The political party frequently performs this function. It must be remembered that most officials are members of some political party. The

party has an elaborate organization covering the units of government from the precinct and ward up through the county, city, state and nation. Pressure groups can very easily reach the government through these channels because an expression of opinion to the party officials is passed on by them to their members in governmental posts. There are other channels the secretarial staff of the Mayor, Governor and President, the committees of the legislature and the public relations staff and advisory councils maintained by administrative agencies. These channels are, of course, in addition to the many opportunities which the representatives of pressure groups have for direct contact with the officers themselves.

There are two very good reasons why governmental officials are so vitally interested in and influenced by the desires of the interest groups with whom they work. One of these reasons is the fact that most officers, appointed or elected, are the mirrors of the constituencies or groups which were responsible for the selection of these officers. They, therefore, tend to reflect the characteristics, opinions, beliefs, convictions, prejudices and attitudes of such groups. Pressure groups are effective in selecting the governmental personnel and in so doing they tend to select people like themselves. Whenever an officer is to be elected or appointed the various interest groups get busy. Through their influence on the political party, which desires to see its candidates get into the office, or on the appointing officers the groups try to keep out of power those groups with whom they disagree or who are so different that they are distrusted and to secure the kind of governmental officials who are like themselves. This means that for the most part the officers will not be predominantly interested in doing things to which their supporters object. They will not be "radicals" and reformers antagonistic to their people but may become supporters of reform when their pressure groups so desire. The loyalty of the officer will tend toward the groups which are supporting him rather than to some vague "public" or "the people." As one observer and authority has stated the matter: "In fact, in viewing a politician that has been representing the people for ten, twenty, thirty or more years, I have often felt that I was seeing his constituency in miniature—not all of it, but its basic quality. In normal times, he is the expression of the general tenor of his people."²

The other reason for the described relationship between the officer and the interest groups lies in the officer's knowledge that he is helpless without his pressure groups. He is aware of his dependence upon the powerful economic and social movements of the day. He knows that he must swim with the waves and not against them. Governmental officials are the most realistic of persons and they know that the failure of support from the dominant interest groups may mean ineffectiveness, if not

² *Ibid*, p 98.

loss of office. Rarely does one seek failure and the governmental official is no different from other people. He may find his actions overruled or counteracted by appeal to higher authority, or by the refusal of other officers to enforce them or by the fact that he is in a minority. The interest groups which want something from government, and this includes all of them, desire representatives who can get them what they want. Thus the official knows that his ineffectiveness may mean defeat when the time comes for his re-election or re-appointment and that another may be selected who will accomplish what the powerful group or groups desire. This can very clearly be seen in the sales tax controversy in New Jersey a few years ago. In spite of opposition from many groups such as the retail merchants and labor unions the state adopted the tax. The opposition continued to grow and the propaganda against the tax strengthened this trend. At the next election some of the legislators who had voted in favor of the tax were defeated and when it came up for reconsideration others changed their votes with the result that the tax was repealed.

Governmental Pressure

It is not to be said, however, that officials are only receptive agents. They also reject the suggestions of pressure groups, as must be perfectly apparent wherever there is a conflict between two or more groups. It would be impossible to comply with the programs of two groups one of which desired a sales tax and the other not. Where such a situation occurs, the officer may reject the demands of one side and comply with those of the other. In general, it can be said that he will tend to side with that group with which he agrees. If that is dangerous because of the weakness of such a group he may comply with the demands of the stronger of the two groups, although that need not be the case in every situation. He has frequently a very difficult task in trying to decide because it is not always easy to compute the consequences of his decisions. In many instances the conflict may be so severe and the groups so evenly balanced that an officer cannot or desires not to decide either way. In such an instance he will tend to accept a compromise, when possible, in order to give each side something, trying not to alienate either of the two groups. Everything considered, however, he tends to comply with the group with which his loyalties rest. Consequently, it is not a denial of the thesis of politics as presented in this chapter to point out that a particular pressure group or that many of them fail to influence the activity of government or to accomplish the transfer of their programs into governmental policy.

Likewise, an officer may take the aggressive in formulating and advocating certain policies which he believes ought to be adopted. And this occurs quite frequently because governmental officials are leaders as well as followers. In doing so, however, he knows that he must either

convince some existing group to accept his ideas and support him or he must develop such a group. Consequently, he will not take a stand which he knows will not be supported by anyone or by a very weak group because he knows that he will be helpless should he do so, even if he does not lose his office as a result. And, at the very beginning of the governmental process, that of the selection of officers, no officer who is likely to make such proposals is likely to be put into a position to make them effective.

Government may also frequently bring pressure on the pressure groups by presenting them with a disagreeable choice. In this way the groups are more or less pushed into the position of supporting the men in office. This tactic may be termed "playing one group against another." Having given a group some of its demands an officer may reject others, knowing that the group will not desert him because they are getting something. He, therefore, may provide the farmers with the economic and financial assistance which they want and thus be able to ignore their desires when it comes to isolationism in foreign affairs. Or, American labor may be forced to support the New Deal officers because they feel that their interests have been and will continue to be more adequately protected by those officers than by their opponents.

The government, then, is itself a pressure group and it brings pressure to bear on the other pressure groups as well as the contrary. For example, a speech by an officer inevitably influences many people and this influence becomes greater with the higher prestige of the office, with the greater cleverness of the speech and with his ability to speak convincingly. Also, by granting the demands of some groups officers can often get their support and consequently be in a position to frustrate or influence the demands of other groups. In various ways officials are able to build up pressure groups of their own. They may be called personal groups because the officers can usually depend upon them for support in whatever action, within limits, they may choose to take. A personal following can also be developed by the fact that an officer who is a competent leader may do for inarticulate groups things which he knows they will want or who may provide governmental action which satisfies some other inarticulate wants. In doing so he must be capable of seeing dissatisfaction and in judging unexpressed or poorly expressed desires. In developing such groups the personality of the officer is an invaluable and indispensable factor. Many examples of such officers come easily to mind: Franklin D. Roosevelt, Theodore Roosevelt, Al Smith, Fiorello LaGuardia, William Borah, Carter Glass and many others.

Political Bosses and Machines

Sometimes personal groups are called "machines" and their leaders, whether governmental officials or not, are called "bosses." These terms

have come to have bad connotations but in reality machines are nothing more than personal pressure groups. Usually the name is applied only to those personal organizations which are local in nature, primarily city or county groups with influences that may extend into state or even national politics, which are not based upon particular programs such as tariff, taxation, social legislation, to name a few issues, but upon the performance of such personal services as the letting of contracts, protection from arrest, appointments to offices and other jobs provided for individual members and charity for the destitute. In other words, there are many people who are not interested in the government's social or economic policy but who still want something from the government. The "boss" satisfies those wants and thus gets the support of such persons in much the same way that an officer may comply with the desires of the Chambers of Commerce or the National Association of Manufacturers and thus acquire a supporting interest group made up of such organizations. And yet the latter is not normally called a machine, although the only important difference between the two lies in the different things which their supporters want from the government. Writers on government and politics have given the former kind of machine a bad reputation because of the moral disapproval which they have expressed against the things which such machines have wanted from the government. In spite of the bad reputation, however, it must not be thought that the machine is supported only by criminals, vice racketeers, poor people, political henchmen and aliens. That is not the entire story. Most of the machines about which we have much information have been supported by more reputable people as well. For example, there may be a contractor who is getting lucrative contracts from the government, or a large business which is being protected by the machine from building inspectors or from fire inspectors or which is securing business from the machine because it purchases governmental supplies from that business. There may be support from a labor union which is being aided by suppression of a rival union or by police protection in case of strikes. To a large extent today the notorious Hague machine in Jersey City is dependent upon the loyalty of employers, of the A. F. of L., of the local American Legion and of the Catholic Church.

The supporters of a boss must often pay a price for the services which he renders. This price is the necessity to accept the activities of the boss to which they are opposed. In other words, because the boss does some of the things they want he is often able to keep their support even though he does other things which they dislike. Accordingly, the tax rate may be very high, as in Jersey City. Graft may be rampant. Criminals and vice racketeers may be protected. Even though this price may be objectionable to many groups they often continue their support of the machine. There is, therefore, an interdependence of boss and the pressure

groups in much the same sense as that between all governmental officials and the groups. In fact, they are all pressure groups, as has been stated previously.

The "Independent" Officer

The governmental official, therefore, is no mere automaton taking orders from pressure groups. He does have some discretion in deciding how to act and some officers have a good deal more than others. Accordingly, it is frequently pointed out that certain officers are "independent." Such nomenclature cannot be used, however, to describe an officer who has acted contrary to the demands of a particular interest group, although this is sometimes loosely done. People who are unable to secure what they want from the government are often inclined to think of it as being independent of group influence. It must be remembered that in acting as they did the officers may have been complying with the demands of another group.

What, then, is meant by the "independent" officer? In the first place it must be said that no officer is independent in the sense that he is not dependent upon group support. The discretion which he might exercise is always within the bounds permitted him by the interest groups upon which he is dependent. Thus, he can be said to be independent to some degree in acting upon a question upon which his constituency or loyal groups are indifferent. A Senator from New England may have independence from groups in his own state on a question of legislation aiding the citrus fruit growers of California, or granting a pension to someone in Ohio, or concerning the improvement of New York Harbor. But even in these situations he may not be without pressure or completely independent. In the first place he is most likely to be involved in a "log-rolling" situation. That is he may be required to support the legislation for other sections or other groups in order to secure the support of the Congressmen from those sections on legislation for New England. He knows that by giving his support he will be in a better position to get something from the government for his own constituents. His effectiveness often depends upon it and pressure groups have the habit of wanting governmental officials who can accomplish for them the things which they want the government to do. His independence might also be reduced by the political party, also a pressure group, if the party should have made the matter upon which he is acting a part of the official party program. He may find that he may in the future need the party's support, if not for his election, at least for his influence in Congress and thus for his effectiveness in serving his own constituency.

The officer with strong pressure group support in the nature of a personal following, as described above, also has a considerable degree of independence. In all such cases he knows his people very well and he

usually knows how far he can carry them along with him. The only limits to his freedom of discretion are to be found in the limits to which his own group or groups are willing to go with him. If he misjudges those limits he must attempt to convince the group that his decision was a good one and that they should support him in it. This is sometimes called "mending your fences" which we occasionally observe the legislator doing upon his return home from a session of the legislature. Upon his success or failure to carry the group with him may lie his support or repudiation. The limits of discretion are much broader in the case of some officers than they are in the case of others. All of this is true of the "boss" as well as of other politicians. Accordingly, "bossism" has often failed when the boss does things so objectionable to his supporters that they repudiate him in favor of another leader who will provide them with the desired services but not at the same price.

The Politician

As well as serving the interests of groups by transferring their programs into public policy the politicians also perform the "scape-goat" function. That is, they must take the blame from opposition interests for giving to some groups those services which they want from the government. The word "politician" has therefore become a bad symbol. In other words, to call a man a politician is to place upon him a tag of condemnation. Occasionally, politicians are distinguished as good and bad, on the grounds of approval or disapproval of the things they do, but the more common term of approval is "statesman." Likewise, a politician who does what a particular pressure group wants might be called a "leader" by the group, whereas another group which was fighting that action would call him a "dictator." Because of the scape-goat function of the politician a pressure group is in a stronger position. It need not assume responsibility for its influence upon the government but can pass off that responsibility upon the broad shoulders and tough skin of the politician. In more recent times, however, there is an increasing realization of the part played by pressure groups in the conduct of government as a result of the publication of books and articles on the subject. This may mean a decrease in the politician's responsibility in the future, although such is by no means the case yet.

This growing appreciation of the role played by the pressure groups in the American Government has led to a condemnation of them in some quarters. On the other hand, it is strange that anyone can hold this attitude in a society in which it is obvious that on most governmental questions there is considerable difference of opinion and a great number of conflicts of interest. We have never developed a standard, apart from that of pure superiority of political power, upon which to decide what groups are to be permitted and what are to be denied the privilege of trying to influence the formation of governmental policy along the channels which they believe

it ought to go. A pressure group is dangerous only in the eyes of another pressure group and then only when the latter dislikes the former and fears it. So far as this question is concerned, the only difference between pressure groups is in the different things they want from the government.

Usually the criticism of the pressure group is a criticism of the opposition group or of the group with which the critic disagrees or whose methods he dislikes. One never criticises his own pressure group. To advocate that pressure groups be abolished, therefore, raises the question: What pressure groups? Obviously, all of them cannot be destroyed. The only change which could possibly be brought about would be to reduce the number of groups and this might be done to a possible one group. And this could be done only if one group were strong enough to suppress all the others. But even in that case there would be almost inevitably a split within the group and thus an increase in the number of pressure groups. This whole development can be seen in Italy, Germany, and Russia. Thus, the demand occasionally heard today to abolish pressure groups is an attack upon what we call our democratic system of government and would involve replacing it with what we call totalitarianism. But even then there would still be pressure group government. In other words, pressure groups are a result of the nature of our society and, so far as there is any evidence for speculation, are inevitable.

The very common failure to see the interdependence of the pressure group and the governmental officer has been termed the "bad man myth" and "the devil theory of government." That is, what government does is accounted for by the alleged ability of the men in office. When the government does what one dislikes it is accepted that that thing was done because there are bad (incompetent) men in office—politicians—and when the government performs what are thought to be praiseworthy things they are said to be done because there are good men—statesmen—in office. The assumption is, therefore, that in order to get a good government, that is a government which does only those things which one wants, all that needs to be done is to replace the bad men with good men.

The principal difficulty with this explanation of governmental activities is that it ignores the influence of the pressure groups upon governmental policy. It is an example of the scape-goat function which must be borne by governmental officials. It fails to realize that in general very much the same things would be done by the government regardless of the personnel holding office. It assumes that the government does just what particular officers, alone and unrestricted, decide that it should do and that they can make any decision they wish to make. Another error in the myth is the failure to recognize that some groups must believe the men to be good and competent men and to want them in office. In fact, that is just the reason they are there. Students of government have never developed any objective standards of competence or any way, outside of pressure politics, to put

any standards into practice. In reality, people judge the competence of the officer on the grounds of their approval of his policy and of his effectiveness in accomplishing what he set out to do.

The myth is made still more unrealistic by the fact that apart from the attitude of people it is well nigh impossible to define the term "politician" or to say just who is and who is not a politician. Certainly not all officers of the government are commonly considered to be such. Neither does the method of selecting them constitute a criterion for definition. Judges and administrative officials, whether they are elected or appointed, are rarely thought to be part of the political system. We have a different terminology for them. Judges are said to govern according to law. They are said to do nothing but apply the law, impartially, independently and only after a fair weighing of all the evidence in the cases to be settled by them. Administrators are viewed as experts who do no more than to apply laws to the specialized, complicated and highly technical fields within which they are experts. The term politician is usually reserved for the executive and legislative personnel of the national, state and local governments and for the officers of the political parties.

To give the term this restricted meaning is to make of it a purely arbitrary classification which has little meaning. This is true because the individuals to whom it is applied do not differ in any respect from those to whom it is not applied. The characteristic of occupation does not distinguish the executive, the legislator or the party officer from others who are not considered to be politicians. In many instances the former are business men or lawyers or they may have some other occupation, which they might or might not be practicing at the same time. One need not think very long before he can list the businesses or professions of a great number of mayors, governors, legislators, presidents and party committeemen. Very frequently the officers of corporations will also be party officers. In many instances the boss of the local machine will be a lawyer or a business man. How are such individuals to be classified? As a matter of fact there is no uniformity of practice in this respect. Sometimes they are called politicians, sometimes business men, lawyers or whatever the other occupation might be; and sometimes they are put into both classes. But such persons very frequently resent being considered as politicians. They often profess themselves to be business men in politics or whatever the case may be. This fact is evidence of the connotation of evil which infects the word "politician."

If we are to define the term on the basis of method of making a living then there is no difference between the legislator or executive who lives upon his salary and the judge or administrator who does likewise. Also, both may make a life-long career of the governmental job, passing from inferior posts to those with more power, prestige and salary. Why, then, make a distinction between such individuals? How can we call one "poli-

tion of making the machinery of government work, then a great many persons who are not commonly considered as politicians are no different from those who are so considered. Judges, administrators, lobbyists, pressure group leaders, business men, farmers, lawyers, workers, consumers, preachers, professors and others manipulate the machinery of government as well as presidents, governors and legislators. The ward committeeman or the party henchman who punches doorbells, distributes literature or makes speeches urging people to vote for the party's candidates for office is doing work no different than that done by the officers of a corporation who deposit slips in the pay envelopes of their employees urging them to vote for or against particular candidates, or than that done by the heads of the C. I. O. and of the National Association of Manufacturers who make speeches favoring or opposing candidates. The party machine which contributes funds to pay the election expenses of its candidates is doing the same thing as the corporation or the labor union which gives the party money for the same purpose.

The inevitable conclusion is that while we can make an arbitrary classification of some persons in our society as "politicians" there is little ground upon which to do so. In reality, all persons, in or out of office, who attempt to get what they want from government or to influence governmental policy according to their opinions as to what it should be by the manipulation of the machinery of election and the conduct of governmental offices are politicians. They are all doing the same thing

Political Graft and Corruption

Politics and many politicians are frequently said to be corrupt. We hear a great deal about political graft. This attitude towards politics raises two very interesting and important questions, an understanding of which will make for a sophisticated understanding of the nature of politics. What is corruption and why do we have it?

Political graft and corruption are no more than the unethical phase of pressure politics. Although everybody wants something from the government all people do not want the same things. Some people want things which are viewed by other people to be unethical. Also, it must be remembered that governmental officials can do or refrain from doing the things which people want. For that reason, an inducement must often be offered to get the desired action and this inducement may be viewed by others to be unethical. Graft may also be, therefore, the method of getting what one wants from the government.

The answer to the second question raised above is, therefore, that we have graft because people want it. All people do not want all kinds of graft but nearly everybody wants something from the government and is willing to furnish the inducement to get the things which he wants. When

the things wanted and the inducements used are considered unethical, the persons involved contribute to the existence of the graft. Thus officers alone are not solely responsible. There must be other persons. The one exception, of course, occurs where the politician lifts money from the treasury for his own personal use, but this practice is probably very rare.

Some people want lower taxes on themselves, less spending for military preparedness, legislation against or in favor of labor unions, laws regulating the production and marketing of goods for the protection of the consumer, appointments to political jobs, contracts to build streets, highways and buildings or for the sale of goods and services to the government, protection from punishment for evasion of taxes, gambling, prostitution, speeding, violations of factory laws and many other things. The latter are usually considered to be graft but not the former. In order to get these services the people who want them are often willing, or they may be required by the officers, to do, in return, what the officers want. The "consideration" may be political support, votes, contribution of funds for campaigns, furnishing of services in campaigns by making speeches, by directing employees how to vote, by pushing doorbells and the payment of money. The last one is called a bribe, i.e. graft, but not the former. It is bad to give a politician money to break a strike at your store but not to make the payment a contribution to his campaign fund or to give him your vote or some other support at election time.

Some kinds of graft are considered worse than others. Thus, to protect a violator of the traffic laws is not considered as bad as to give protection to a house of prostitution even if both are induced by bribes. Also all inducements are not considered to be graft. Accordingly if an officer does something for me in return for my vote it would not commonly be considered graft. But if the consideration were money (a bribe) the transaction becomes tainted. A distinction between honest and "dishonest" graft was made by "Honest John" Kelley, a former boss of Tammany Hall. To illustrate: If a school building needed a new copper roof and the governmental officer whose duty it was to take care of that would give the contract to a friend, political or otherwise, or would give it to a contractor in return for a consideration such as political support or money that would be "honest" graft. The graft would become "dishonest" if the school did not need a new roof.

Another interesting aspect to this definition of graft is the very common tendency of people to think of their own part in the deal to be proper whereas only the acts of the governmental official are thought to be the graft. A recent experience comes to mind of a man who faced loss of his license for a traffic offense when the use of his car was vital to his business and who succeeded in getting a "cheap politician," so he said, to kill the charge. It is not uncommon for contractors or the owners of buildings to look with contempt upon the building and fire inspectors who do not, in

return for a bribe, require them to observe the safety requirements laid down in the law. In fact, the politician is always much more responsible for his part in graft than is the other party to the deal. In the case of prosecution for bribery the officer is almost sure to be punished but the other party may or may not be. There is also a very common tendency for people to look upon the deals made with politicians by other people to be graft but not their own deals.

The result inevitably is that "graft" is another one of our bad words. It is applied to those actions of the politicians which we do not, usually for ethical reasons, like but it is not used to describe the acts of which we approve.

The same kind of deals, or relationships, exist in the business world but are not called graft. The ethical nature of this word is therefore shown by comparison between the two. Legislators have been known to vote themselves salary increases or travel accounts to be paid out of the government's budget, but the same actions are by no means unknown in the lives of corporations. Bribery also plays a part in the business world. The salesman trying to make a deal with the purchasing officer of a corporation has been known to "salve the palm" of the latter as a means of getting the sale. Lesser forms of "consideration" may be simply the providing of entertainment. The salesman may provide liquor, parties and other inducements to get the purchaser to buy. The practice of giving jobs to relatives is a frequent practice in both the governmental and business worlds. In the former it is disapproved as "nepotism" but in business the boy who gets a job from his parent or other relative is simply thought to be a fortunate individual. In politics it is necessary and important to have friends and connections because politicians do things for their friends. The same thing is true in the economic world. How often do we hear about "contacts." One may go to college, join the country club, become a lodge or church member, play golf and do many things in order to establish the contacts which he believes or hopes will help him in his job. Protection to favorites may also occur. An employer may make certain rules of conduct, such as promptness in getting to work, but not enforce the rules against all his employees equally and impartially. In government this is called graft in giving protection to lawbreakers but in the other relations among people it is called favoritism or toadying.

CHAPTER 64

THE POLITICAL TECHNIQUE, OR HOW TO WIN

Probably the most important factor in political power is the knowledge of how to proceed in getting what is desired. That group which is expert in the technique of manipulation of the various parts of the governmental machine is more likely to accomplish its objectives than the group which is inexperienced or bungling or ignorant of how to proceed. Politics, in other words, is not only what people want but also how they go about getting what they want.

A word of caution is necessary, however. It cannot be said that a particular procedure accomplished its objectives. Nor can it be known with certainty just what factors influenced the formulation of a particular governmental policy. The reason for this is that we have developed no standards by which to determine the relation between cause and effect, to decide whether particular efforts by a pressure group were actually the motivation producing the desired action by the government. There is no way of measuring effectiveness. All that can be done, and the task of this chapter, is merely to describe. In this respect, the observer can see that groups do make demands on the government, that they do use certain techniques, and that the desired governmental action does often follow. The observer can also note that there are instances where the same techniques are not followed by the desired governmental action. It must not be thought, therefore, that if a pressure group follows certain procedures it is sure to get the kind of public policy which it wants.

It may be that all the factors which go to make up political power are not known. Some of them seem to be clear, however, and one is justified in believing that governmental policy is the result of the interplay of various forces and pressures.

Importance of the Governmental Machine

To fully understand the political technique it is necessary to grasp two facts: (1) knowledge of the machinery of government is indispensable and (2) government is an intricate machine which can function only if all parts do their allotted tasks. One who would try to influence the policy of the government must know where to exert his efforts, how to do so, where he is more likely to be effective and where a potentially successful effort will be more likely to accomplish what he desires. He must know that there is a strategy to possible victory in politics as well as in war.

One result of the above two facts is that very frequently groups need not scatter their efforts over the entire governmental machine. Only one agency or one officer may be involved. Knowing where to go, therefore, the pressure can be applied at that point or at those few points where it is necessary. Many examples can be given. A business man who wants to sell supplies to the government need be concerned only with the officer who has charge of doing the government's buying. The man who wants protection from arrest need frequently influence only one or a few policemen. If he can't get protection from the officer on the beat he may get it from a superior who can move the patrolman to another beat and replace him with one more amenable to influence. When Congress placed a tax on adult games the producers of jig-saw puzzles had only to go to the Bureau of Internal Revenue to get a ruling to the effect that puzzles below fifty pieces were children's games and thus not subject to the tax. In this way they succeeded in protecting themselves to some degree from the payment of a tax on their business. It is often possible to stop the enactment of a law to which there is objection in only one Committee of the Legislature. Also there is always the fact that it is possible to fail to get what one wants from lower officials and succeed by appealing to superior officers. One may lose a case in all the lower courts, for example, and win just by a favorable decision from the highest court. A victory in one court, one committee, one commission may be all that is necessary.

A second result is that a group need not bring pressure on all officers in even a large agency in order to secure its desires. Usually a majority is all that is necessary. This often means that only a few officers need be affected because large bodies frequently divide in opinion and the difference between the majority and the minority may not be great. Thus it may be necessary only to get a favorable vote from a few senators or from one or two judges or commissioners. A decision of the former may be completely reversed merely by the change of opinion by one or two judges. In the case of a three-man commission or court one man may frequently decide which way the decision is to go. This leads to the conclusion that a particular pressure group which cannot influence the opinion and action of some officials may still gain its goal. Particular governmental action is not frustrated by the fact that some officers are "independent" of some pressure groups. Also, it is quite immaterial from what part of the government the group secures what it wants. The important thing is to get its wants satisfied. This, of course, places a premium upon a knowledge of the governmental organization.

The Legislature

The opportunities which all groups have to participate in the formation of governmental policy are numerous. It is fairly easy for any group to get a bill introduced into the legislature. Using the national government

for purposes of convenience, all that need be done is to get a member of Congress to do it unless it is a tax bill in which case it must originate in the House of Representatives. The first important place for action by the group is the committee to which the bill is referred for study and a report. The committee has extensive power over the fate of the bill. It can kill it entirely and here is the graveyard of most bills which are introduced. Only a small number of the bills introduced ever see the light of day. The killing process may be by simply never reporting the bill to the House for its consideration. If the group opposed to the bill can succeed in getting such action its fight is usually won. Failing in this, the committee may be induced to report the bill unfavorably and when such happens the group in support of the bill has another chance on the floor of the House but the odds are overwhelmingly against it then because the House tends to accept the committee's report. That group, therefore, will strive to get a favorable committee report and if it succeeds the bill will most likely be accepted by that House. But the committee's power is even more extensive. It may recommend that the House accept the bill with amendments. This is very important because amendments may so completely change the bill that it has no chance of adoption by the House or they may reduce the bill to such a harmless state that its opponents need not object to it any longer. It is up to the supporters of the bill to try to prevent such emasculation of its bill in the committee. The opposition group may be so strong that the supporters of the bill may find it necessary to concede some amendments in order to be able to get the bill successfully enacted. The result, therefore, may be entirely different than that originally desired. This can be shown by the Tugwell Pure Food and Drug Law and by Franklin D. Roosevelt's Administrative Reorganization Bill. Both were so drastically changed that the final results were hardly more than shadows of the original bills.

Assuming this House mentioned above to be the House of Representatives, the bill reported from the committee must next be placed on the calendar for consideration by the House as a whole. Here again is a strategic place for action. The Rules Committee in the House often has considerable power over the calendar. Its discretion may determine whether the bill receives any consideration and, if so, whether it is to be favorable. The House itself may require both committees to act should they kill a bill by failure to act but this is such a difficult process that it can be done only where there is considerable support for the bill. This is not always the case with the result that the action of either committee may be conclusive as to the fate of the bill.

The legislators can frequently hide behind these committees and thus deceive the pressure groups. It is often necessary, therefore, for a group to recognize this fact and to guard against it. This is probably best done by the employment of expert lobbyists. It frequently happens that a legis-

lator is asked to introduce or support a bill with which he disagrees, which he believes is foolish or which he is afraid to support because of the power of the opposition and yet does not want to refuse because he does not want to alienate the group making the request. He can easily agree to introduce or support such bills in many instances because he knows that they will never get by one or the other of the two committees. In that event he is not forced to take a position on the bills on the floor, a position which is often difficult to conceal. Accordingly, he need not take the responsibility before a pressure group for its failure to accomplish its aims. He need merely point to the committee and say, "they did it."

When the bill is reported for the consideration of the House there is another opportunity to amend it, although that task has now become much more difficult. At this stage of the process the bill may also be defeated by the failure of a majority of the Representatives to vote enactment. Thus the supporters of the bill must protect it through this step in order to come out at the end with a law. As a general rule dilatory tactics do not play as great an importance in the House of Representatives as they do in the Senate, but there is still some opportunity to use them. Thus the opposition may repeatedly demand roll calls or interrupt with points of order in the attempt to delay the vote while they strive to induce more Representatives to vote against the bill or to wring compromises and amendments out of its supporters. The latter may do the same thing where they are short of a majority. Thus, there is the example of the Speaker of the House, a member of the majority party, delaying the announcement of the results after a vote has been taken in order to give time to the Bill's supporters to try to induce some doubtful Representatives to change their votes. That strategy would occur where the Speaker was on the side of the supporters and the bill had failed of adoption by only a few votes. Such conduct is possible because the rules permit one to change his vote prior to the announcement of the result.

A vote may be recorded or unrecorded and therein lies an important element in strategy. In many instances a Representative would prefer the anonymity of the latter method. It may mean that he need not give a pressure group the support which he does not want to grant without being held responsible by the group for his action. Thus he may vote differently depending upon which way the voting is done. There are instances of measures winning or losing on a viva voce vote and then contrarily being defeated or passed when the vote is recorded. A pressure group must govern its strategy accordingly. Therefore, if it loses upon an unrecorded vote it may try to force a roll call. If it is very strong it will probably prefer the recorded vote because then none of its Representatives can welsh upon their support without the group knowing it. Thus the pressure is greater. A group will prefer whichever method it believes will aid it in accomplishing its objective.

Once the bill is through the House of Representatives it must now pass much the same hurdles in the Senate. Accordingly, a pressure group which has failed all the way through the House might win the war if the bill is killed in a Senate committee. The group will therefore work on the committee with that objective in mind. Also there is a greater opportunity to use dilatory tactics on the floor of the Senate than is the case in the lower House. The rules are more lenient, debate is freer. It is here that the filibusters, of which the public has heard so much, take place. In the lower House the time during which one can speak is limited and thus no filibuster can occur there. In the Senate, on the other hand, there is no limit to the time a Senator can use in speech-making. The objective of the filibuster is to prevent the Senate from voting upon a bill either for the purpose of defeating the bill, or to get the opposition to concede amendments or to prevent a group getting a law it wants until it agrees to give the group conducting the filibuster the law or other action it desires but which it is too weak to get of its own unaided efforts. If the Senate defeats the bill it does not become law even though the lower House did adopt it. Thus the opponents of the bill will try to achieve that goal.

The Senate may amend the bill as well as the House. In fact, a bill adopted by one House may be different in some respects from the same bill adopted by the other House. This means that the groups have another attempt to influence the process of government. The differences must be reconciled either through compromise in a Conference Committee made up of members from both Houses or each House must accept the changes made by the other. In either case the fight goes back again to the two Houses. Thus the groups will try to influence the work of the Conference Committee. A group which dislikes the changes made by one House will try to get the amendments modified in the Committee. Upon a consideration by one House of the changes made in the other House the groups will try to get approval or to prevent it depending upon their aims. The most likely result at this stage is compromise with the result that the final bill as adopted by the two Houses may fail of a complete victory for any particular pressure group.

Executive Approval

The next strategic place for pressure occurs with the necessity for Presidential action. Before the bill becomes law the President must approve of it or let it become law without his signature. Consequently, the group in favor of the bill will work for Presidential approval or at least against a veto. The group opposed to the bill will try to induce the President to veto it. If the pressure on Congress up to this stage of the process has been from the Administration the action here will not be doubtful. If the Administration has been fighting to get the bill through Congress, Presidential approval will usually be a certainty. A possible exception is where the

bill has been so drastically modified or amended that the Administration no longer wants it.

It seems clear that a pressure group opposed to a bill may fail to stop it all the way through Congress, but win the war in a Presidential veto. Likewise, the group which wants a law may be successful in Congress but be defeated by Executive disapproval. This is true because a veto is usually conclusive. It is extremely difficult to pass a bill over the veto, the Constitution requiring a two-thirds vote of both Houses of Congress. In an overwhelming number of cases the President has enough support from his own party in at least one House to prevent this. Generally, the position of the President will not be different from that of the party. Also, if the demand for the bill was so strong that a two-thirds Congressional approval is clear, there is very little likelihood of the President vetoing the bill.

The veto is itself an excellent instrument of pressure. The threat of a veto has considerable influence on Congressmen and it is thus one method whereby the Administration brings pressure to bear on Congress. Also a Congressman may vote for a bill he dislikes knowing or expecting a veto and thus not alienating the support of the group which wanted the bill. When two groups are quite strong the political party will strive to keep the support of both and the veto may play a part in this strategy. The party members in Congress may vote a bill which one group wants and the party's President may veto it thus giving the other group what it wants. In this way both sides get something from the party and neither is likely to withdraw its support from the party. This can be seen very clearly in the soldier's bonus fight. The American Legion, a very well organized pressure group, wanted the appropriation but there was also considerable opposition. The Legion keeps a close check on the way Congressmen vote and uses this record in its election campaigns. An amorphous opposition group tends to forget by election time but the Legion doesn't make that mistake. Thus, Congressmen, however they may think, in general dislike to go against the Legion. At the same time the political party does not want to lose the support of the opponents of the bonus who are by no means negligible in political influence. Thus, many Congressmen have avoided several times the opposition of the Legion by voting bonuses over vetoes and Presidents have cleared the party record by their vetoes.

Law Enforcement

The story does not end here. Once the bill becomes law with the approval of the President or despite his opposition, the enormous task of enforcement is yet to be faced. Accordingly, a group opposed to a bill might not have been able to stop it becoming law but might be able to influence the enforcement of it so well that they, in the final count, win their aims. Little is accomplished by passing laws. The effectiveness of governmental action comes with the enforcement of these laws. It is then that the interests of

the pressure groups and of people are affected. It is immaterial that a law is passed if that law is not enforced, or if it is rendered so harmless that it need be neither feared nor desired.

As important as this matter is, it is frequently forgotten. A common attitude toward governmental action might be summarized by the oft-heard statement: "There ought to be a law against that." So often do people look upon laws as settling matters. So often do people forget that the legislative process is not the only or even the most significant part of the governmental process. Accordingly, pressure groups are often seen to succeed in getting the laws they want, relaxing their efforts and then failing to accomplish their objectives. We have laws against vice and yet we have prostitution and gambling. We have had laws against the liquor traffic and yet that traffic was rampant during the life-time of the laws. We have taxes on incomes and yet many people do not pay to their full legal liability. We have laws against trusts but we have many of them. We have laws protecting the consumer from impure and adulterated foods and drugs and from false advertising and yet we have all of these things. And so it might be *ad infinitum*. Interests in favor of a law probably have a tendency to relax in their efforts at this stage more frequently than do those opposed to laws. The task of enforcing laws against the opposition of people is very different. In fact, the task of enforcement is much more difficult, as a general rule, than that of preventing or minimizing enforcement.

In other words, the fight has not been won or lost just because a law is passed. The statute might be contested in the courts which have the power of declaring it invalid or which can interpret it in such a way that it no longer accomplishes what had been originally expected of it. In this way the groups opposed to the statute might finally win even though they lost every step of the way through the legislature and those in favor of the bill might finally lose even though they had been victorious previously. Furthermore, it must be noticed that there are many courts so that there are many opportunities given to both groups in their struggle for or against governmental actions. If one does not win in one court he can often take an appeal to a higher court. Thus, he may achieve victory merely by convincing the highest court of appeal of the merits of his case. Many examples of this strategy may be given. Twice Congress passed Child Labor laws only to have the United States Supreme Court defeat their supporters by invalidating the statute on grounds of unconstitutionality. The same fate was meted out to some of the earlier New Deal Laws. The Sherman Anti-Trust Law might be given as another example. When the United States Supreme Court ruled that the statute forbade only those combinations which unreasonably restrained trade instead of interpreting it to apply to all combinations in restraint of trade the maximum potential effectiveness of the legislation was frustrated.

The courts may also be used to contest the individual actions of enforce-

ment officers. Thus every step of enforcement may be slowed up, obstructed and even nullified by suits and decisions. Many cases, involving somewhat different questions and arguments, may be started. A multiplicity of suits has a variety of effects. Often administrative officers are made cautious so that they are not as vigorous as might otherwise be the case. This technique may also serve to slow up their work so they do not enforce the law as widely as they might otherwise do. The opponents of every attempt at the enforcement of the law may raise legal questions of procedure. They may charge in the courts that the administrative officer acted without due process of law or that the evidence does not warrant his actions. This question, as well as attacks on the validity or interpretation of the statute, might be used in the attempt to nullify enforcement. Much of this picture can be seen in the one example of the National Labor Relations Act. Failing to prevent its enactment the opponents of the Act tried to get it invalidated by the courts. Failing in this they have since brought many cases involving disputed interpretations of the terms of the act, thus questioning the power of the National Labor Relations Board whose duty it is to enforce that law. Many other actions have been brought attacking the board's procedure on grounds of unfairness or weight of the evidence. Some of these actions have been successful.

It should be clear that the courts are just as much a part of the government as are legislators and administrators. Many of the things people want from the government may be granted by the courts as well as by some of the other agencies. For example, an employer may want the government to protect his right to fire an employee who joins a labor union rather than to guarantee to the employee the right to do so. That employer gets the desired governmental action in a decision of the court nullifying an order of the National Labor Relations Board just as much as if the legislature had granted him the right to fire by refusal to enact the statute. Likewise, one who wants the government to protect his property from taxation may get that protection by a court decision preventing the collection of the tax, or by administrative rulings which do not apply the tax against his property, or by the defeat of the statute levying the tax or by a Presidential veto of the tax bill.

Successful use of the courts requires the knowledge of the courts in which suits should and can be brought, to what courts appeal should be taken where necessary, how to do this and what arguments are most likely to influence the court to reach the kind of decision desired. The person who renders this service is the lawyer.

Whether governmental action changes the status quo may also depend upon the activities of the officers who enforce the law. Thus, political strategy requires that attention be paid to the administrative agencies. Enforcement may be weakened if the administrative staff is too small to do the work required or if there are insufficient funds. Thus the opponents

of a particular statute may strive to prevent the creation of an adequate enforcement agency. The economy argument is a good one here. It is alleged that the government must economize and thus should not appropriate the necessary amount of money for vigorous enforcement. Other arguments are charges of government snooping, bureaucracy, inefficiency and waste. A good example of this strategy is to be seen in the Pure Food and Drug Administration which for years was restricted to only 61 inspectors and about a million and a quarter dollars annual appropriation to protect about 120 million consumers covering the enormous territory of the United States from a legion of food and drug businesses. It is well known that many state laws dealing with working conditions, such as ventilation, light, sanitation and safety devices, are inadequately enforced because the staff of inspectors is too small to cover thoroughly the industries in the state. The enforcement personnel may also be bribed or otherwise influenced in some instances. This can be seen in police protection for vice and in the failure of fire and building code inspectors to require the owners of buildings and the contractors to observe the fire and building codes designed to provide protection to the people who use the buildings.

The attitude of the enforcement personnel toward the laws they are selected to apply is important in determining the course of the government's activities. The administrative officers have a very wide discretion in selecting methods and delineating procedures of enforcement, in interpreting the laws and in deciding whether or not to proceed at all. Any particular group, therefore, which can secure the appointment of law enforcement officers friendly to their interests has gained a great influence in the conduct of the government. This can be shown by the appointment of Olney as Attorney General. Disapproving of the Sherman Anti-Trust laws he refused to enforce the law by initiating new cases and lost the one important case he had inherited from the previous administration. Likewise, the Radio Commission granted licenses to the Radio Corporation of America even though it had been found guilty of violating the Anti-trust laws by the courts and the statute provided the penalty of loss of license. The Radio Commissioners easily avoided a task which they did not want to perform by holding that the violation had occurred in the manufacture of radio equipment and not in broadcasting. Another example would be the dislike of the majority of the Federal Trade Commission for vigorous enforcement of the Anti-Trust Laws in the latter half of the 1920s and their consequent adoption of the trade practice conferences. A group which desires to accomplish certain objectives through legislation will be much more effective if it can secure an administrative staff which is in sympathy with these objectives.

Accordingly, whenever an officer is to be appointed to the administrative agencies of government or to the courts the pressure groups can be seen at work. Each group tries to get the appointment of men who have its atti-

tudes on political, economic and social questions and attempts to prevent the appointment of men with objectionable opinions. Pressure is exerted first on the appointing officer and then on the Senate in the case of those offices which require its approval for completion of the process of selection. An analysis of the deliberation of the United States Senate on appointments will give ample evidence of the importance of economic and social opinions and of the activity of the pressure groups.

Failure to influence the selection of the personnel, however, does not necessarily mean defeat. There are many additional opportunities to try to get what the group wants. Disliking the activities of the administrative officers the group may get them nullified through a superior officer. Thus, a rule of the Pure Food and Drug Administration dealing with the use of corn sugar in jams and preserves was nullified by the Secretary of Agriculture upon the vigorous protests of farmers and industrialists. Successful appeal may be made even to the President as shown by the experience of the Tariff Commission in the early Twenties. High tariff interests often objected to the Commission's recommendations that the rates be lowered and succeeded in inducing Presidents Harding and Coolidge to refuse to make the recommendations effective. Groups in opposition to Administrative action may also nullify that action by appeal to the courts, as already shown. Similarly, the orders of the Secretary of Agriculture lowering rates of the commissionmen in some of the Middlewest Stock Yards have been invalidated by the United States Supreme Court. In addition to these opportunities the group may go to Congress to get the statute repealed or amended in such a way as to accomplish their objectives. The activities of the National Association of Manufacturers and the A. F. of L. in trying to get the National Labor Relations Act amended to their liking are examples of this strategy.

Furthermore, in the attempt to influence the enforcement of law, and thus of the conduct of government, groups may attack the laws and their administrators by propaganda campaigns through speeches, radio, movies and in other ways. This technique may build up such opposition to the law that it cannot be very thoroughly enforced. It is almost axiomatic that enforcement fails whenever there is any very extensive violation. In the final count law enforcement, like all governmental action, is dependent upon the voluntary support of a great majority of people affected. The propaganda campaign of the groups opposed to enforcement, therefore, often urges or encourages people to violate the law. One recent example of this is to be seen in the radio speech of Senator Tobey of New Hampshire advising people to refuse to answer some of the questions in the 1940 census. His efforts were not successful, however. Also, the attitude of the enforcement officers may be influenced by such a campaign. Recent examples of this strategy can be seen in the attacks on much New Deal legislation. The N. R. A. was undoubtedly weakened by the propaganda against it.

The pressure groups often use all or most of the described opportunities to exert pressure on governmental policy at the same time. The fact of the matter is that people do not stop struggling to get what they want from the government and even if they do get it they cannot stop for fear that they will lose it. A defeat at one place is not conclusive nor is a victory final. What has been won at one stage may be lost in another and vice versa. Thus a group which has succeeded in getting a law from the legislature cannot afford to rest on its laurels. Also a group which failed to get what it wanted from the legislature may often succeed in the courts or the administrative agencies. Even the decisions of the United States Supreme Court are not conclusive. A group which failed to get the decision it wants may try again. It is by no means unknown for the court to reverse itself. Recently, for example, the Supreme Court, reversing prior decisions, gave to some women workers state protection through the setting of minimum wages for which many groups had been working for a long time. The court may also distinguish a new case from one previously decided and thus a group win in the second what it failed to get in the first. A defeat in the Supreme Court may become a victory another day either because of a change of opinion of a few judges or new personnel on the court. Also, although the court may invalidate a statute, the group wanting action of the kind provided in the statute may find its desires satisfied by the enactment of another similar, but somewhat modified, statute which the court holds to be valid. Furthermore, if a group fails in the court it may get ultimate victory by way of Constitutional Amendment. This can be seen in the income tax and prohibition fights. It must be said, however, that this is the hard way because of the extreme difficulty of formally amending the Constitution.

Methods of Procedure

In order to understand the technique of American politics it is necessary to know the methods by which the interest groups exert pressure. It is not enough for a group to know that it has the various opportunities sketched in this chapter. It is necessary to know also how to utilize them. There are three prominent methods of procedure: the lobby, the political parties and propaganda.

(1) *The Lobby*.—"Lobby" is the name given to those people who represent the pressure groups by personal contact and in reality any person who tries to influence the action of any part of the government in personal contact is a lobbyist. He may be hired by a pressure group and this is the usually accepted meaning of the word. One who volunteers his services gratis is doing the same work, however, and he must therefore be also considered as a lobbyist. He may have no apparent connection with a particular pressure group but his efforts to influence governmental policy may coincide with the efforts of a group and in that sense he is their lobbyist.

A person may make a living by professional lobbying or he may act in that capacity only once. He may represent a non-partisan group such as the Chamber of Commerce, or a political party, an administrative agency, the President, a State or other local government.

The lobbyist is often one of the experts of the pressure group. To most people government is just a lot of machinery doing a lot of unknown things. It is very confusing to them. Let alone they would not know where to go or what to do in most instances to get what they want from the government. This function is performed by the lobbyist. He "knows the ropes" and provides a much needed information or service. Accordingly, the professional lobbyists usually come from a group of men whose experience has been such that they have the training, knowledge and preparation for that activity. They are made up very largely of ex-congressmen or other former officers of the government and of lawyers, party workers or newspapermen who have acquired the necessary knowledge of the intricate governmental machinery and procedure. For example, ex-Congressman O'Connor of New York, who was defeated for reelection in 1938, appeared in Washington after the election as the representative of various pressure groups. The lobbyist must also know how to argue persuasively. A great number of people are obviously disqualified here. They would not know how to use statistics, reasonable arguments, evidence and the terminology which makes one's attempt to convince another person much more effective. Some lobbyists perform both of these functions and some just one.

This definition, of course, is not the conventional one. The word "lobby" is another one of our bad words. People tend to think that it is something which is both unnecessary and undesirable. For that reason the lobbyist does not like to be called such. Other words, not so condemnatory, are used. Accordingly, he may be called a witness, an expert, a legislative agent, a public relations counsel or an executive secretary. The lobbyists for governmental agencies use the titles of their offices. Thus, a Mayor or Governor is not called lobbyist. President Roosevelt's former lobbyist, Charles West, went by his title of Assistant Secretary of the Interior.

The primary reason for this bad connotation is probably an historical one. The term was applied to those people who appeared in the lobbies and cloakrooms of Congress and buttonholed Congressmen in the attempt to influence their decisions. It has also been applied to people who tried to influence Congressmen by social entertainment and social recognition. While this may be done today the use of conventionally disapproved methods is accepted as being negligible. The lobbyist need not frequent the lobbies. He has too many other opportunities of much more significance to waste much of his time in that way. More important, that technique is so greatly disapproved today that it is more likely to prove ineffective than otherwise. Lobbying, for the most part, has gone "high-hat." To a very large extent today the term is applied only to those men who are trying

to induce a governmental action to which the one using the word objects

The lobbyist knows that his procedure is very important. In the first place, he is just as likely to produce antagonism as well as support. Thus, attempts at bribery, social recognition in the Capital, entertainments and threats are prone to backfire. An attempt to use them may make the officer, jealous of his reputation and integrity, angry and resentful. In the second place, there are many conventional routes to governmental officers and they often dislike being seen talking to lobbyists in the halls and cloak-rooms. Very often officers are accessible in their offices. They are often pleased to see the lobbyist, to know what the people he represents want or what they are thinking. In fact, officers often facilitate their accessibility by secretarial staffs, appointments and even by asking lobbyists for information. The Congressional committees, mentioned previously in this chapter, are most important channels of communication with the pressure groups.

The lobbyist then is the spokesman for groups on questions of governmental policy. For that reason he performs a function necessary to the American political and governmental system. If people do have different opinions and want different things from the government, as has been shown to be the case, then it is vital that they have a means of expressing their desires. It is futile to have certain attitudes toward governmental action if they cannot be expressed in some fashion. Lobbying is therefore consistent with and conducive to a democracy in which various groups of people have a voice in formulating governmental policy. Such a governmental system is viewed as good but at the same time many people who want it condemn the very instrument by which it functions.

The lobbyist performs services both for governmental officers and for pressure groups. As a channel of communication, through him governmental officers can get the information which they so often desire and need concerning what the various interested groups of people want done. Also the groups are informed through the lobbyist of what the government is doing. In many instances he makes reports to those organizations which hire him about what is going on at the seat of government and this information is valuable to them as guides to their future action and policy. Often the lobbyist keeps elaborate files of information on the activity of officers and this material is reported back to the voters on or near election day. With the lobbyist on the job it is difficult for an officer to hide his conduct behind the complex and elaborate organization and technical procedure of government. Thus the lobbyist makes a real thing out of the responsibilities of the officer to the interest groups. The Anti-Saloon League in past years provides a good example. On election days the dry voters were given information regarding the conduct of their representatives in local, state and national governments and in that way they knew for and against whom

to vote in their attempts to get the officers in power who would give them the prohibition they so much desired.

The information which the lobbyist provides for governmental officers is often of a technical nature. In this way it is often possible for officers to learn about matters which time and technical training would prevent them mastering by themselves. Most well organized pressure groups have research staffs of well trained persons. Their full-time job is to keep elaborate files of information resulting from studies in the field in which the group is interested. A group interested in the tariff will be able to provide information on tariffs, trade, production, marketing and have it ready for the lobbyist to give to the officer who desires it or to use it where it will do the group some good. Often these research staffs pride themselves on their work. They would be the first to resent any reflection on the scholarliness of their work. They pride themselves that they are performing the same functions as college faculties, that is that their function is educational. Frequently their personnel is recruited from faculties or from the graduate schools. A very good example of this service is to be seen in the problem of safety appliances for the railroads. When the Interstate Commerce Commission was given the task of establishing on the railroads safety couplers and the block signal system the Commission had to go to the railroad companies for the experts who developed the necessary improvements which were then adopted by the Commission.

The lobbyist might also report to his organization about the work and discoveries of the experts employed in governmental offices. He may be the source through which an industry gets the advantage of tests and experiments conducted by the United States Bureau of Standards. He may make available to industry or to the farmers the results of studies and investigations conducted by the Department of Commerce or the Department of Agriculture.

It must be remembered that these tasks have become the real job of the lobbyist. He is no longer the ogre who corrupts government and the usual view of him as such is denied by the facts. Thus his function is a service one and because of that he is a valuable factor to both the governmental personnel and the pressure group.

One common error today is to exaggerate the influence of the lobby. It is not an all-powerful institution. The pressure groups have other ways of acting and need not depend entirely upon the lobby in attempting to influence governmental policy. The effectiveness of the lobbyist may depend upon his technique and upon the size or influence of the group which he is representing. Also in a great number of instances one lobbyist might be nullified by another one on the opposite side of the question. The lobby is often checked by the lobby. In addition to those checks, the professional lobbyist may have such a bad reputation that a group is well advised not to employ one or to keep him in the background. Their own officers

may be more effective lobbyists for some purposes. Governmental officers themselves have checked lobbies by attacks through the newspapers or over the radio. Some lobbies have been so weakened by Congressional investigation that they have had little influence. Professional lobbyists are also required to register in the capitals of many of our governments. Statutes make it a punishable offense to fail to disclose their identity, their salaries and the organizations which employ them. It must be said, however, that even those people who profess to a strenuous objection to lobbying have never discovered a way to abolish it with any degree of certainty. To abolish lobbying would be as impossible as the destruction of pressure groups. Also no group wishes to have its own lobby forbidden. Attacks are always directed against other groups' lobbies.

(2) *The Political Parties*—Governmental policy is often influenced through the political party. When this is done the strategy may be called "log-rolling." That is, the party agrees to support the desires of a group, say the farmers, for a governmental subsidy in return for the support of the farmers for the party's candidates in the election.

To understand this strategy it is necessary to bear in mind two basic ideas: (a) most officers who formulate the policy of the government get their offices through the action of the political parties and (b) the two major parties in the United States, Republican and Democrat, have as their primary goal the control of the governmental offices and not the policy which the government should follow. In order to win elections and get control of the governmental offices it is necessary for the party to appeal to as many groups of voters as possible. Thus the nomination of candidates for election and for appointment and the framing of issues will be done in such a way as to create the wide appeal necessary for success. The party's candidates are chosen with an eye to their "availability." That means such things as personal appeal, a record which does not alienate the support of enough large groups to defeat the election or nomination, and the section of the country from which the candidate comes in order to bring into the party's support the politically doubtful, but powerful, geographical districts.

Many hopefuls are not politically available for office. For example, a man who has a record to which the farm belt or the labor organizations are opposed would be a risky candidate for either appointment or election. The best one would have a record to which none of the powerful groups or sections objected and for that reason sometimes parties are pushed into the selection of candidates who do not have much of a record already established. That may be the only way to get candidates who do not have too much opposition. The sectional pressure groups also must be considered by the party. Appointments to judgeships and administrative posts must be spread throughout the country so as to give all parts and sections some recognition. In nominations for President and Vice-President both parties

usually try to appeal to the two powerful sections, the industrial East and the farm belt. Accordingly, usually today one candidate comes from one section and one comes from the other.

The party's or the candidate's program must also be framed to appeal to the pressure groups, if success is to be achieved. The usual procedure is for the party or the candidate and his staff to search to see what the groups want. They hold conferences with business, farm and labor leaders and with people from the various sections of the country. Local officers and party workers are also a valuable source of such information. The program or platform is then worked out to promise the groups what they want, or at least to make them think that the party or the candidate will try to get them what they want from the government. This often means that the platform will promise antagonistic or contradictory things or, more likely, will be couched in such general and ambiguous terms that the groups can construe it to promise what they want to get.

Many groups influence the conduct of the political party because of the votes which they have to give. But that is not the only source of power. Groups also make campaign contributions. It costs a lot of money to run the party, to win elections and to keep the party organization intact between elections. The party therefore is glad to get contributions. On the other hand, the contributors of party funds acquire some influence in party policy and activities. Contributors may call attention to their gifts at such times as they want the party to do something for them. Also the party workers might be more likely to comply with the desires of a group if it is a source of funds. These facts are recognized both by party workers and by contributors. Implicit in much of the legislation dealing with campaign contributions and expenditures is also a recognition of the significance of this source of pressure. In more recent times, contributions of funds by labor unions is a factor in their growing power as pressure groups.

It is not enough for a group to try to influence the political parties only at election times. At that time there are so many factors involved in the party's activities that nothing very definite is usually decided. It is enough for the ultimate purposes of the group to establish the facts that its electoral and financial support is important for the party and that the party should be careful not to lose that support. Accordingly, the parties are more important to the group after election.

One result of group pressure on the parties between elections is that no group is necessarily without influence upon governmental policy regardless of which of the two major parties wins elections. The defeat of one party does not necessarily mean the defeat of any particular non-partisan pressure group. In other words, the groups work through both parties. Even in the case of a group which was opposed to the party at election time, the party may be induced to grant the group some of its demands in order to secure its future support. Another result is the necessity of the party in

power to bear the blame from the opposition groups, including the party out of power, for satisfying any group's demands for governmental actions to its liking. A third result is the similarity in the programs of the two major parties. By virtue of the facts that they both appeal to the same pressure groups for support and that they are dependent upon the same groups for control of the governmental offices the primary distinction between the Republicans and the Democrats is that between the "Ins" and the "Outs."

Between elections groups constantly appeal to the party organizations to protect their interests and to influence the conduct of their members in office. Thus the party can often affect the actions of the government by appeal to the party loyalty of officers by such slogans as "You are hurting the party" or "Do this for the good of the party" and by reminders that the officers need the party for reelection, or in order to have any influence or for both. When the party is in control by virtue of a majority its power is greater, obviously, than when it is in a minority position. But even in the latter case it is not to be ignored by the pressure groups because it can often exert influence through obstructionist tactics in order to force concessions from the majority party and to prevent objectionable governmental action.

The pressure, as has already been pointed out, is not one-sided and may at times be ineffective. The group is dependent upon the political parties as well as the opposite. In other words, the parties are also pressure groups. If a group is weak or if the party has been successful without the group no response may be forthcoming. Particularly is this true where there is an opposing pressure group of some strength which has in the past given support to the party. On the other hand, if there is no opposition a weak group may be successful in influencing the party. Where there are two opposing groups with considerable strength, or where the issue is controversial the party may ignore it and not try to influence the men in office in order not to arouse opposition to the party. The party may also bring pressure to bear on a group by inducing it to modify its demands or get nothing. Furthermore, a party may force a group to support some different governmental action as a price for the party's support for the group's demands. There have been examples of a party fighting a pressure group through investigations, by withholding patronage, by denying it any influence in the government, by threatening it with objectionable legislation, by criminal prosecutions and by other discriminatory treatment.

CHAPTER 65

PROPAGANDA, OR HOW TO INFLUENCE PEOPLE

An important method of exerting pressure on the government to do what is desired is to induce other people, including governmental officials, to want the same things. The demands of people and the attitudes of governmental officials are the forces which mould governmental policies. If, therefore, efforts to create opinion are successful, one may get what he wants from the government.

Pressure groups are usually well aware of the importance and even of the necessity of trying to direct the thinking and desires of people, including officials. Consequently, efforts may be consciously and deliberately exerted to induce people to believe in and to want certain things and to dislike and to oppose others. On the other hand, many of the influences upon opinion are unconscious. The people who exert the influence do not have a conscious and deliberate intent to do so. They are, as is often the case with people, ignorant of their own motivation. They may be consciously striving to entertain, to increase people's knowledge of particular subjects, or merely to analyze particular questions. In so acting, however, an influence is often exerted.

An individual unconsciously has his attitudes formed by his associations with other people. The institutions and organizations to which he belongs, such as the family, the school, the church, the lodge, the bridge club, the trade association and the labor union; the ideas and opinions to which he is subjected by the theatre, the moving picture, the radio, the newspapers, magazines, books, speeches and his conversations with others; the things which other people do for or against him are forces constantly at work in the moulding of his attitudes. In fact, there are times and situations during which the unconscious influences on opinion are probably more effective than are the deliberate attempts to change those opinions.

The process and technique of opinion formulation is such an important force in politics that it must be described if one is to understand the governmental process. Whether the technique is used consciously or unconsciously the important things are the methods used and the effectiveness of the efforts rather than the analysis of motives.

Propaganda

The technique of opinion formulation is often called "propaganda." To do so merely adds confusion to any analysis and description of the tech-

nique because of the variety of definitions of propaganda and of the great controversy over its nature and because of the moral implications of the term.

Propaganda has been defined as deliberately distorted information, and it thereby becomes little more than a synonym for "lie." The difficulty with this definition is that it does not always offer a satisfactory guide to one who desires to weigh seriously the reliability of the information and arguments to which he is subjected. In the first place, whether information is distorted or not is often a very controversial matter. Very often the only criteria are those of agreement or disagreement with it. For example, if one believes and says that government is inefficient and so shot through with red tape, politics and graft that it is not competent to manage and operate a particular business is that a distortion? Many people agree and to them it would not be distorted. But, on the other hand, many other people disagree and to them the argument is false.

Another defect is the inability to judge satisfactorily the motives behind the argument. Even assuming that it may be distorted, is the distortion deliberate? Even though the reasons given for any position may be false the one who advances them may sincerely believe them to be true. His motives may be completely other than the deliberate intent to falsify. Furthermore, if the information *is* distorted what difference does it make, apart from the moral condemnation, whether it is deliberate or unconscious? The important factor is the effect of the argument on other people. If it influences their actions it is a significant force in government. For these reasons this definition of propaganda reduces it to no more than a word to be used to discredit the information and arguments with which one disagrees.

Propaganda is sometimes defined to mean the presentation of only "one side" of a subject, as against the giving of "both sides." This definition is also defective. In the first place, the implication is that one is distorting, either consciously or unconsciously, by suppressing information. But is he? Just when does a question have "two sides" and when not? As a matter of fact all questions do not have to all persons more than one side and a question which has only "one side" to one person may have any number of "sides" in the opinion of another. For example, if one believes that the country is being ruined by an unbalanced budget he is discredited by this definition if he teaches only that the budget should be balanced. He is automatically required to advocate at the same time that the budget not be balanced in order to escape from criticism. Likewise, if one believes that the country is in danger of attack and that adequate preparation needs more armament he must also give the reasons showing that there is no danger, or very little danger, of attack and there is no need, or little need, of more preparation. And what foolishness is this? Is it to be insisted that one should teach what he believes to be untrue or dangerous? In other

words, this definition requires that one do the very thing he is condemned for doing—that is, that he distort by teaching what he believes to be false. Furthermore, if one does try to present both or several “sides” to a subject he cannot possibly discuss the “side” he believes to be untrue as convincingly as he does the one in which he believes. His treatment will inevitably be one-sided even though he is honestly convinced of its impartiality and reliability. Nothing more than that can be reasonably expected from any human being. This definition, therefore, does not give to propaganda any different characteristic than the preceding definition. It still remains a word to be used to discredit the information and arguments with which one disagrees.

The term propaganda is also used to describe ulterior motivation. People act upon a great variety of motives and to the minds of most people motivation is important. On this matter, as on others, thinking is polarized into the good and the bad, the laudable and the suspicious. Accordingly, where the motives are thought to be bad the word propaganda is applied. Among them are the desires to protect one’s economic interests, to achieve some objective, and to induce people to act in certain ways. Contrasted with these motives are the “good” ones which are not tainted with the tag of propaganda: the intent to make people think about important questions, to make people analytical, and to increase their understanding and information. The primary defect with this usage is the frequent inability to determine just what another person’s objectives are. There is no infallible guide or clue to motivation. Sometimes it is clearer than at other times but rarely is it as simple as many people think and say. The influences upon any person’s thoughts and actions are so complex and involved that even he himself cannot usually know what his drives and his motives are. Thus, another defect is the failure of the definition to cover unconscious motivation. For example, one may write about government ownership and operation of business with the conscious intent of merely giving his readers more knowledge of his subject and he may adhere strictly to the standards of intellectual honesty but even unknown to himself he may be so in sympathy with government ownership and operation that his unconscious motivation, and even the effects of his work, may be to induce his readers to think favorably of it and to give their active political support to such governmental activities. Furthermore, there is little, if any, distinction between the good and bad motives apart from moral approval and disapproval. What difference does it make whether one *deliberately or unconsciously* sets out to influence another’s attitudes and actions toward government ownership and operation? In understanding the governmental process the matter of primary importance is that people and government were influenced. Likewise, there is little value in distinguishing between intents to induce people to think and intents to induce them to think and act in particular ways. It is impossible to say where the first ends and the next

begins. People think and acquire attitudes from their thinking. They think before they act. To affect the former, whatever the intent of a writer or speaker, may or may not affect the latter. The inevitable conclusion is that this definition of the term propaganda is of no more value than the preceding ones. It is no more than an expression of suspicion of another's motives which, because they are suspect, deprive his arguments and information of credibility. The word still has the characteristic of a "smear" tag. Thus, where one dislikes what another says he can discredit him by casting suspicion upon his motives through the use of the word propaganda. And often do people suspect the motives of one who says something objectionable to them, something with which they disagree.

All three of these definitions fail to consider the fact that it is impossible to say everything about any subject. No one possesses that much information and people would not listen to him or read his writing if he were too verbose. One must pick and choose his materials, he must make a selection. In so doing he can only present what he thinks is "important," "true" and "necessary" to cover the subject he sets out to discuss. Upon what basis does he make his choice? Why does he think that some facts are more important than others? Obviously, there is some principle, some frame of reference upon which his judgment is made, even though it be unknown to himself. Although he does not consciously strive to direct the thinking and actions of other people in particular channels his frame of reference is composed of the kind of attitudes he is unconsciously trying to induce people to accept. Furthermore, another person need not agree with his judgment of what information is important, true and necessary, with the result that charges of distortion and of being one-sided might be made simply because the opinions of the two persons do not agree.

A fourth definition eliminates the defects of those given above. Propaganda is described as all activities and all information, oral, written or pictorial, true or untrue, which is designed to influence or which results in influencing another person's opinions or actions. Propaganda is information which offers itself for belief. It includes all the influences which are brought to bear upon the individual's mind by his environment and which shape his attitudes and actions. By this definition the word ceases to be a tag of condemnation and at the same time a most important social force is given a name. All propaganda is thus not considered to be something bad but may be either good or bad depending upon (a) whether one likes it or not and (b) whether it is effective in the performance of its functions or not.

While this fourth definition does eliminate the defects of the first two it has its own defects. In the first place it is too academic. Most people do not use the word in this sense and if one is to converse with people understandingly he must use the language they use so far as possible. By popular usage propaganda is a condemnatory term and in ordinary social inter-

course one must use it in that way if he desires not to be misunderstood. In a recent showing of an educational film it was announced that a particular film was propaganda and many students immediately jumped to the conclusion that it portrayed fictitious situations and events. Accordingly, the academic definition is of only limited utility. In the second place, people do have a scale of values. They do think in terms of good and bad. These facts mean that they feel the need for a terminology with which to express these values, and the academic definition of propaganda does not meet this need.

Propaganda, therefore, is merely a smear word. It means something unreliable, something which one does not want to believe. It is used to discredit the words and actions of people with whom one, for any number of reasons, disagrees or of whom he disapproves. People rarely consider themselves to be propagandists or the things they say and do to be propaganda. Only other people are guilty. Because of this common usage and this meaning of the term most propaganda analysis, whatever the conscious intents of the analyzers, is no more than the application of a bad name to the statements people make. The effect of analysis is, therefore, to influence people's thinking and actions because by classifying statements as propaganda they are discredited.

It is not the objective of this chapter to make moral judgments, to distinguish between truthful people and liars, to cast reflection on the motives of some and to approve those of others, or to decide what is good and what is bad. The attitudes of people and of governmental officials, their desires, their prejudices, and their ways of thinking are a real force in deciding what the government is to do and to refrain from doing. Call it propaganda or not, the subject of this chapter is the influences which mould attitudes. They are important to an understanding of the political process.

Ways in Which Influence is Consciously or Unconsciously Exerted

Inasmuch as the entire environment of a person is constantly affecting his ideas and attitudes the sources of influence and the ways in which the individual is subjected to them are so varied and complex that little more can be done in a limited space than to show that complexity. The actions of people may influence others whether they were so motivated or not. Any time any pressure group does anything for a person or for any group of people the effect may be to gain their approval and support. For that reason, it soon becomes an axiom of politics that service pays, just as is the case in the business world. A political party gives jobs to men or enacts legislation desired by certain pressure groups and thereby gains support. A boss or machine gives protection, or distributes patronage or awards contracts, all of which are desired by the recipients who often become loyal supporters. A court decision supporting labor's right to organize or

outlawing sit-down strikes results in a favorable attitude toward the courts on the part of organized labor or the employers as the case may be. When, in the normal performance of their duties, the Departments of Agriculture and of Commerce provide reports on production, market conditions, prices and many other questions for farmers and business men the result is to gain their approval. The activities of the former have been so effective in building up farm support that numerous attempts in Congress to cut appropriations for the Department have resulted in farm pressure against such moves. Legislators who vote appropriations for business men or for the unemployed gain considerable support from such groups. Also, when the League of Decency fights for censorship of movies or of literature and when the National Association of Manufacturers urges higher tariffs or amendment of the National Labor Relations Act these organizations receive the approval of the people who want these things from the government.

Argumentation and appeals to reason may convince people to believe as the author of the appeal does. People always look for reasons for action and for opinion and are thereby affected when this method is used. Every time a governmental agency acts or every time any other pressure group takes a stand it gives reasons and makes justifications for its position. Administrative agencies and courts give reasons to show that their decisions are "right." Legislators, executives and leaders of all pressure groups make speeches, issue reports and statements giving the evidence upon which their actions and contentions are based in order to show that they acted "rightly."

The channels of communication are vital factors in the extensiveness of influence. The greater the number of people to whom ideas are presented the greater is their potential effectiveness. Accordingly, the two most important channels are the radio and the newspapers. The movies and the mails probably come next. A party or other group holds a convention, hears speeches and passes resolutions, all of which are often reported in the newspapers, carried over the radio and announced in the newsreels. The decisions of courts and commissions, the activities of the President and other executives and the deliberations, votes, speeches and laws of the legislative bodies of the country are also reported. Through the mails governmental agencies and officers, economic and other pressure groups send to a great number of people reports, speeches, conclusions of research and of other investigations and statements of all kinds. Often large mailing lists are kept for that purpose. Furthermore, if one should desire the information which the pressure groups always have ready for distribution he need only send a post card making his request and he will receive free of charge, great quantities of their publications. For example, a request of the trade associations will result in the receipt of pamphlets on taxation, on tariffs, on labor legislation and on many other subjects. Gov-

ernmental agencies, like T.V.A. or the Department of Agriculture follow the same practices.

Actual events often tend to develop favorable or unfavorable opinions. For that reason the mere reporting of news is a process of opinion formulation. Examples might be the reports of atrocities in German concentration camps which helped create a very antagonistic feeling on the part of many Americans toward Nazi Germany. Likewise, the reporting of the activities of the President or of other governmental officials may tend to induce favorable and unfavorable reactions from the people who read the news. This effect of news reports is completely independent of any perversion or distortion in the reporting. It may be as accurate and as impartial as is humanly possible.

Entertainment also plays a part in opinion formulation. While a movie may be consciously intended only for the purpose of giving pleasure to people the mere fact that it treats manners, activities and situations in one's environment often means that attitudes are involved. A movie which shows politicians to be corrupt tends to entrench the bad man myth in people's minds. A movie of slum life is a force in creating opinion for slum clearance and low cost housing. Many crime movies affect attitudes toward policemen, capital punishment, judges and the penal system. The advent of the documentary film has added a potent influence in the formation of opinion. Some examples would be the movies made by the United States Government on conservation, flood control and farm relief.

Not Exclusively Political

It is not only attitudes toward government which are affected by associations with other people and by subjection to their ideas. The forces in society which mould opinion on political questions also influence the attitudes of people toward the family, toward crime, toward business men and labor unions, and toward the church.

The moving picture, the theater and the novel are important forces. If divorce and marriage are the subjects, the way in which they are treated tends to affect attitudes toward them. This influence is recognized by the efforts toward censorship. Some churches, for example, ban or approve plays and books on the basis of their portrayal of the family and of sex. Much of the censorship by broadcasting companies over the material that is permitted to go out over the air is additional evidence. The movies have often been accused of making smoking by ladies popular and of increasing the consumption of intoxicating liquor by portraying them as amusing, popular or harmless, and of increasing the amount of crime by a sympathetic or a hero treatment of criminals.

Everybody belongs at some time or other to one or more of the many institutions in society. The association with other people involved in membership in an institution affects attitudes. A business man may be influ-

enced in his opposition to labor unions or in his approval of some and disapproval of others by the trade association or chamber of commerce to which he belongs. His business practices in his own concern may similarly be modified. Labor unions often tend to foster a sense of solidarity among workers. The influence of the parents upon each other and upon the children in the home is a vital social force. Very frequently the thinking and opinions of children are so firmly moulded in the home that they are only slightly modified by some of the later influences from outside the home. This is particularly noticeable to school teachers and to others active in public education. The school itself has some influence upon the opinions of the students and teachers. The latter are often affected by their conversation with their colleagues. Students sometimes change their attitudes on such things as economics, politics, sex, and religion as a result of their associations with fellow students, of the social force of local school and fraternal conventions, and of the fear of social ostracism if they do not conform. Teachers also influence the thinking of students by the force of reason and ideas, of personality and of the authority which convention has placed in the teacher over the student.

The newspapers, magazines, periodicals, and books which people read affect their attitudes toward non-political as well as toward governmental questions. The information which comes from these sources deals with the situations in which people live. They may read about heinous crimes and be stirred to think about the causes for crime and the reasons for punishment. They may be aroused against labor unions by information of corruption in a particular union. They may lose a prior confidence in corporations or leading business men by information about their activities.

Deliberate Efforts to Mould Opinion

Pressure groups frequently set out with the deliberate goal of creating as favorable an attitude from as many people as possible as one of their techniques of getting the kind of governmental action which they consciously desire. Such activities are vital factors in politics and some authors have characterized this technique as propaganda, but it is not to be understood as thereby condemned. Efforts may be as honest and as sincere as is humanly possible. They differ from other opinion-forming activities only in the fact that they are deliberate and conscious efforts.

These activities constitute an effective technique in the manipulation of governmental action because governmental officials often want to give to people the things they want from the government, because their own opinions are often affected and because their effectiveness may be limited by the support they get from people. It is clear, therefore, that efforts are exerted both by governmental officials and by non-officials. The ultimate objective in either case is to influence governmental policy, but the imme-

diate goal is to mould the opinions and actions of people. The latter is a means of accomplishing the former.

The governmental or non-governmental pressure group which develops popular support or which appears to be doing so tends to be more effective in influencing governmental policy than one which fails to do so. Appeal is made to people, to those not already in the group and to other groups. The goal is to induce the "general public," which means the great mass of people not in the group, to support the group. In this way the amorphous general public may become organized on the side of the conflicting pressure groups, and the struggle to gain their good will is a never ending one.

The opinion which is developed by the pressure group's activities is expressed to governmental officials in many ways. A very common method is through the mails. That is, people may be induced to write to the officials expressing their opinions and making their demands. This has been called the process of "applying the heat from back home." Groups often urge people to write such letters and at other times hope that their efforts will be so effective that letters will be written voluntarily. Governmental officials exert their pressure on other officials in the same way. For example, a speech by the President may develop such support for some particular legislation which he desires that people demand that their Congressmen vote for the bills the President wants. Opinion which the groups develop is also expressed through the political parties. The workers of the party are constantly alert to the trends of opinion and report their conclusions to the party officers and to the party's members in governmental office. Officials also consult the leaders and spokesmen of the pressure groups and often watch the channels of communication to see what efforts are being exerted by what groups. Very often officials are quite adept at estimating the expertness and potential effectiveness of a group's efforts to develop a favorable opinion.

At the same time the opinion formulation activities of the pressure groups help mould the attitudes of officers themselves. Like other people, their desires and prejudices are created by the forces in the environment and one of these forces is the pressure group. They are not to be considered as immune from the deliberate efforts to create desired patterns of thought and action any more than are other people.

Organization and skill are vital to the successful use of this political technique. The rule of the day is specialization and organization. There must be employed experts in raising money, people who can write convincingly and interestingly, speakers who have trained and pleasant voices, persons who can create emotional appeals through pictures, newsreels and cartoons, publicity experts who know when to release the group's appeals and who can utilize the means of communication for the widest dissemination, and many other experts. Deliberate opinion formulation is becoming more and more a professional technique. All of the influences on people's

thinking, which have been indicated previously in this chapter, are known and deliberately utilized.

Limitations on the Effectiveness of Deliberate Efforts to Formulate Opinion

It must be emphasized that a group cannot be sure that its efforts will accomplish the desired results. All that can be said is that they may or may not influence other people to believe and to act in the ways desired and that some techniques are accepted as being more persuasive than are others. The line between cause and effect is a very tenuous and uncertain one. Also, all the reasons explaining why people think and act as they do cannot be stated because the conditioning process of the environment is much too complex.

It was once thought possible to direct the thinking and actions of people at will. This is no longer believed. It is now known that there are many limitations upon deliberate efforts to mould opinion. In the first place, people have heard so much about "propaganda" for many years and have been warned about it so often that they have become suspicious of efforts to influence them. They suspect the motives of those who appear to be trying to mould their attitudes. Unconcealed effort may not only be ineffective but may actually and positively induce people to believe and act contrary to the desired objectives. As a result, motives must either be concealed or they must seem to be the "good" ones. Arguments must appear to be scholarly and reasonable. The apparent objectives must be such ones as entertainment, or the protection of the general welfare, or the advancement of learning and information, rather than self-interest. Herein rests one of the reasons for the effectiveness of the unconscious influences upon thought and action. Whereas deliberate efforts to develop a particular opinion are in danger of disclosing their nature the unconscious efforts are more often concealed and people are likely to be influenced unknown to themselves.

Another limitation on effectiveness is the unwillingness of people to believe. This occurs where their conditioning or where the influences upon them from other sources in their environment have been so strong that their thinking patterns are set. For example, some people may not be influenced by a speech or a book which advocates ideas contrary to those of their associates, or of their parents, or of their churches or contrary to those presented in the movies which they habitually attend. Likewise, to many people particular organizations, periodicals or people may be suspect. There may be such objection to business groups, labor unions, churches, particular newspapers, particular magazines, certain governmental officials or other well known persons that their words will fall upon many deaf ears. In such cases, people tend to discount what they do not want to believe by calling it propaganda and thus not worthy of

belief. It is also often very difficult, if not impossible, to convey to another's mind the ideas which one is trying to express because the patterns of thinking and the frames of reference which people acquire from their conditioning often cause them to read their own ideas into the words of another. This limitation does not mean that the efforts to develop attitudes are rejected but that they merely do not have any effect.

Another very definite and important limitation on the effectiveness of any group's use of this technique is the counter efforts of opposing groups. People are given a choice. And this is very real because on all controversial issues people are being bombarded by contradictory claims. We are told that the government must and that it need not, balance its budgets. The National Labor Relations Board is said to be fair and unfair to the A.F. of L., to the C.I.O., to the employers. Some claim that the Reciprocal Trade Agreements program is vital to national economic welfare while others allege that it is injurious or worthless. We hear arguments in favor of large scale rearmament and against expenditures for such purposes.

In addition to these limitations, there is always the necessity to get control of the means of communication. If one group can get radio time it has the advantage over one which cannot do so. The news and other information which comes to all people over the air, in the newspapers and on the screen is under the control of the owners and managers of these means of communication. Accordingly, groups may be hindered or even suppressed by the lack of funds with which to use these facilities or by the refusal or failure of those who control them to provide the opportunity to present arguments or to advocate certain courses of conduct. In the case of newspapers, the power of advertisers is apparent. They have, at times, been able to influence editorial policy or to suppress news. In general it may be said that the groups which are powerful financially or by sheer numbers are able to force the owners of these facilities to grant the use of them. On the other hand weaker groups may be frustrated by the denial of their use. They may be forced to use the less effective means of disseminating their ideas such as the mails, billboards, sky writing and the like.

Some Common Ways of Thinking and of Argumentation

Efforts to formulate opinion will be more effective if they are directed, consciously or unconsciously, in accord with people's desire to believe. People possess patterns of thought. They come to believe that certain things are good and desirable and that others are bad and injurious. They accept the ideas and ideals of the society in which they live. Consequently, one who tries deliberately to mould the kind of attitudes and actions he wants must know these patterns of thought and must consciously utilize them. At the same time some people may influence the attitudes and actions of other people without consciously intending to do so because

they all live in the same society and therefore possess the same patterns which are unconsciously used.

(1) *Name-Calling*—One of the most common methods of influencing people's political attitudes is the use of name-calling. Political language includes a great number of words which go in pairs of opposites and which express approval and disapproval, or good and bad. The trick is to apply the good terms to yourself and your ideas or program and to attach the bad ones to your opponents and their ideas and demands. This may be done deliberately with the sole idea in mind of affecting the opinions of other people or it may be done sincerely in the belief that one is on the right side whereas one's opponents are dangerous. As a matter of fact the latter may more often be the case because people tend to think in just this way. At any rate, through usage the terms have become so meaningless in themselves that it is well-nigh impossible to say with much certainty that one is wrong or that he is distorting, deliberately or unknowingly. The important fact is that the use of certain words do seem to influence people's attitudes.

The bi-polar words are legion. Probably the most severe today are the "isms": communism and fascism versus democracy and Americanism. Thus, often opponents are called red or radical and are charged with overthrowing the American system. These are so severe, however, that there are many situations in which they cannot be used because they will not be believed. In such instances the more moderate terms must be used. One whom we dislike may be called a politician or bureaucrat whereas the governmental officers of whom we approve are statesmen. The New Deal put into popular use some other terms such as money changers and Tories and economic royalists. We have progressives and liberals as distinguished from reactionaries who are said to be hankering for the horse and buggy days. The opponents of President Roosevelt say he is a Dictator whereas his supporters look upon him as a leader. In former times the word King was used instead of the newer Dictator. Accordingly Washington, Jackson and Lincoln were called Kings. The same connotation is carried over today by the term Roosevelt, II. Other similar words often used are lunatic fringe, racketeer, grafter, red tape, efficiency and inefficiency, common sense, bankruptcy, governmental solvency, fair and unfair, just and unjust, scientific, businesslike and so on *ad infinitum*. The word propaganda is itself one of the smear words. As already shown it can be used to discredit the argument of one's opponents. Another word to apply to the program to which one is opposed is unconstitutional. People respect the Constitution of the United States, even if they are totally ignorant of its provisions, and do not approve of violating it. Also they have a strong tendency to look to the Constitution for protection. Thus they often believe that what they want the government to do is constitutional but that those things of which they are afraid are forbidden by the Constitution. One's own

demands are always viewed as constitutional, it being only the other fellow who violates the sacred document.

These terms may be used openly or they may be spread by way of the whispering campaign. Rumor runs rampant and seems to have an inherent tendency to spread far and wide and to be very difficult to counteract. Often denials will not quiet gossip and to take notice of it may serve to do no more than to assist its spread. Many people seem to place more credence in information of this sort than in that coming from speeches and other sources. There is evidence that it has been used since times long since past. It is said that Mussolini, Hitler and Stalin all use it today. In the United States rumors unfavorable to government officers have often been spread. A hardy perennial is the whispered charge of marital dissensions in the families of our Presidents. Ofttimes people believe such things told them by others and pass them on in all sincerity, not for once believing that they are telling falsehoods and gossiping.

(2) *The Chamber of Horrors* Closely akin to the name-calling device, in the sense that the emotion of fear and the desire for security are involved, is the Chamber-of-Horrors. This is the method of parading all the imaginary disasters that might result from certain proposed governmental action to which one is opposed. The opposite to this occurs where the supposed benefits of the proposed action are stated. Many examples can be given. The United States will get into the European war, it is said, if we sell munitions to the belligerents. Those in favor of such a policy claim it will keep us out of the war. Lower tariffs and more international trade will prevent war. An unbalanced budget will result in bankruptcy and financial chaos. It has been said that unless the government provides relief for the unemployed we will have a revolution in the United States. And, it has been alleged that another war will destroy capitalism, democracy and the civil liberties. This device has been described in a recent debate in the United States Senate as follows:

The other day upon the stair,
I saw a man who wasn't there.
He wasn't there again today,
I wish that man would go away.

People say these things and many others similar to them. And they often believe what they say. They are not always deliberately distorting. Nor can it be said that they are necessarily wrong. Dire predictions may come true. Prognostications of a glowing future may also come to pass. The only difficulty is that we do not always know for sure. The alleged consequences are not inevitable. In many instances they may be more certain than in others, but very often that fact is ignored and absolute certainty is claimed where there is no certainty. The reason for uncertainty rests in the fact that there is not always a clear line between cause and effect. Many things

may occur between the action and the alleged result to destroy completely the validity of the prediction. As a matter of fact there is no known human action from which both disastrous and propitious consequences might not result.

A prediction made by informed persons on the basis of a knowledge of the situation and of history will no doubt possess a degree of certainty. The fact that it possesses a degree of reliability, that it is therefore more credible and more convincing, that it is not naive, make it both more potent and more desirable as a method of convincing people.

(3) *Projection*—A similar device is that of projection. This occurs where a pressure group extends its ideas and demands to a wider circle than itself. There are variations of the technique. One way is to speak for "the people" rather than just for the group. Demands will be more convincing if it is said that "the people want" this or that than if it said "We want" it. Thus at election time we hear that the people are tired of the party in power rather than that the party out of power is tired of the one in office. Or, the claim is made that the people are convinced that the National Labor Relations Act is unfair to the employers rather than that the employers are so convinced. The opposite may be used, also. Thus, it is said that the people want a particular candidate to run for reelection rather than that he and the pressure groups supporting him want the return to office. Another variation is to speak for the welfare of the whole country. In this way it is represented that what a group desires for its own interests is identical to the welfare of all groups in the country. Accordingly, all groups sincerely identify their interests with national welfare and believe that what helps or hurts them does likewise for all other interests and groups in the United States. Business, labor and agricultural groups desiring higher tariffs are convinced that the country is injured by low tariffs in disregard of the fact that other businesses, workers and farmers may be helped. Still another variation occurs where a group speaks for the welfare of another group. Assumption of the possession of a superior knowledge of another's welfare is very common among people. It is ordinary and usual to see some people consciously or unconsciously trying to impose their ideas on others on the grounds that those ideas are good for them. In other words one group often will identify its own welfare with that of another group which is following a different program. Thus, people with property and jobs tell the unemployed that it is demoralizing to accept governmental relief, thereby trying to induce them to oppose such governmental activity. Employers tell workers that they get no benefits from unions or that one union is better than another one. Likewise, unions try to convince employers that there are advantages for them in unionization in the attempt to induce them not to oppose the organization of their workers. Very often the spokesmen for agricultural groups are urbanites and business men.

This method also may or may not be sincere. Very often it is. Humans are not always so modest as to think that they do not know where another's welfare rests. Also, seeing no good in governmental relief or unionization or farm subsidies, a group which attempts to convince another group of that fact is doing no more than saying what it believes to be true.

(4) *The Prestige Symbol*. People can often be induced to believe by the use of authority. Where this occurs one is said to be using the prestige symbol. That is, he invokes in behalf of his position the influence of those people in our society who are known as experts, who through training, experience and study have developed a competence and knowledge not possessed by people in general, or whose opinions carry weight because of the positions they hold. Often even the people who do not *want* to believe may be affected because they cannot help thinking that they *ought* to believe.

The expert may be one employed by the pressure group. Accordingly, some groups subsidize research on the problems in which they are interested or maintain research staffs of trained and competent persons. These staffs make studies, produce reports, articles, books and monographs that are often the equal in scholarliness and authority of those produced by unattached research workers. The only defect in this activity is the difficulty of maintaining the appearance of objectivity or impartiality. Too often the work of these people carries the implication of economic motivation or prejudice, with the result that a pressure group cannot rely solely upon its own people for its appeal to authority, but must turn to others.

The best expert is the one who is not obviously working for the group. Accordingly, the published research of scholars is often used when it reaches conclusions desired by the group or when it helps to support the demands of the group. Many examples can be given. A professor publishes a defense of a low tariff or of the reciprocal trade agreements program. This may be cited and quoted by the lobbyists and leaders of a pressure group which approves of such legislation. A University staff makes a study of economic conditions in the South and finds that section of the country to be poorer than other sections. This work may be used in the attempt to get national legislation helping southern farmers, industry or labor. Studies and statistics of lynching in the South have been used recently by supporters of the Anti-Lynching Bill now in Congress. A report of the Department of Agriculture on natural resources furnishes authority for the advocates of conservation. An excellent illustration would be the study of transportation problems, which reached conclusions sympathetic to the railroad companies, by the highly reputable and scholarly Brookings Institute which has been used by the Railroads in their demands for governmental protection from the competition of the inland waterways. Also, reputable

studies of the distribution of wealth and income have often been invoked to bolster relief, low-cost housing and public health programs.

That the words of some people bear more weight than those of others is obvious. Opinions of individuals in the public eye will reach and influence more people than those who are unknown. Statements of Presidents, Governors, Mayors, Senators, Cabinet members, labor leaders and heads of corporations may be weighty merely because of the prestige of the positions they fill. A person will be much less effective if he argues that people charged with crimes ought not to be given the third degree or that a state government has no right to pass laws taxing the income from federal bonds than if he says that the Supreme Court of the United States has held these activities to be violations of the Constitution and therefore unconstitutional. Even the statements of the dead are often invoked. Accordingly, isolationists appeal to the words of George Washington on entangling alliances. The opinions of Chief Justice Marshall are quoted by pressure groups in favor of national centralization. And so on it goes. We often hear about Jackson, Jefferson, Lincoln and Theodore Roosevelt. Sometimes the dead are quoted correctly and sometimes not so; in many instances they might very well turn over in their graves if they were aware of the purposes and objectives for which their names and statements are often used.

Some other persons with prestige value in our society are Professors, Economists and Lawyers. Thus it is good technique to say that Professor So-and-So of Such-and-Such a University found such-and-such to be true or that "Economists believe". On questions of law it is very desirable to find a lawyer whom one can quote. This was done, for example, by the Liberty League at the height of its power in the middle 'thirties. Instead of merely contending that certain New Deal legislation to which the League was opposed was unconstitutional, the League hired a group of lawyers who, no doubt sincerely, wrote opinions in good legal form showing the alleged unconstitutionality.

It must not be understood, however, that the opinions of persons with prestige are all powerful. Many times people who do not want, for any number of reasons, to believe a particular thing cannot be induced to do so. Also, the experts are often divided with the result that opposition groups may also have their judges, lawyers, professors and economists. Thus, the prestige symbol may be employed in support of contradictory propositions. For example, lawyers can be found who will render opinions that certain legislation is constitutional and others that it is unconstitutional. This has often been done. Another factor in the failure of the prestige symbol is the polarization of attitudes towards many of the experts themselves. That is, people think in terms of good and bad. It is said that there are good and bad experts, that they may be conservative or progressive and that some are prejudiced but others impartial. The result is that a

conventional authority can be justified or discredited in accord with one's desires. This bi-polarity can be particularly well shown by using as an example the attitude toward the professor. He is considered to be a sincere, learned, impartial and scholarly person; or a naive, theoretical, irresponsible frequenter of libraries and laboratories divorced from the practical problems of the world. He and his work, nevertheless, are often used by conflicting groups. The New Deal has been noticeably attacked by its opponents who used the latter characterization against the New Deal's academicians. To some cartoonists academic regalia became synonymous with the party in power. New terms were applied, such as experimenters and brain trusters. Nevertheless the Anti-New Dealers could not entirely divorce themselves from dependence upon the expertness of the professor and often invoked his prestige. His work and research has often been used. The Republican Party accordingly set up an advisory committee of experts on policy, on which were some professors. In the final analysis, a pressure group takes the position that its experts are reliable but that those of opposing groups are not.

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CHAPTER 66

THE CIVIL LIBERTIES, OR FREEDOM FOR WHOM

If we accept the ideas, which seem indisputable, that everybody wants something from the government and that politics is the technique of getting those things, it becomes evident immediately that the civil liberties are of the greatest importance to the American political system. Without them people may be denied the satisfaction of their wants. It is therefore the purpose of this chapter to study the opportunity given or denied to different groups of people to employ the political techniques discussed in the preceding chapters.

Importance of Civil Liberties

To have an opinion but to be unable to express it in a potentially effective way is of no great advantage to any individual or group. The civil liberties are necessary to enable groups to undertake their struggle to mold governmental policy. This means that the right to have opinions is not enough. Freedom of speech, press and assembly are essential to the ability of a group to express its demands, to make that expression convincing and thus to build up its support by influencing the opinions of other people. Freedom of petition is vital to the presentation of views and demands on governmental policy to governmental officers. It means the opportunity to write letters to one's Congressman, to testify and to urge personally that a governmental agency adopt the course of action which is desired, and to lobby in favor of one's demands from the government. Along with these liberties goes freedom of religion which is vital to the very existence of religious groups. As has previously been shown, churches are to be listed among our pressure groups in the sense that they have ideas on what the government ought or ought not do and try to get the adoption of the policies which they favor.

The civil liberties are recognized by American ideology. Contrary to the beliefs of other countries such as Germany and Italy, American traditions, jurisprudence and political philosophy elevate freedom of speech, press, assembly, petition and religion to a vital position. Convention does not deny the use of the political techniques to any pressure group in its aims to influence the formation of governmental policy. This is sometimes called "democracy," and in reality it is the only sense in which that word has much meaning.

Restrictions on Civil Liberties

It is not to be thought, however, that all groups of people in this country have unlimited opportunity to become strong and to exert influence upon the conduct of government. There are many restrictions on the right of groups to use the American political techniques. Although the civil liberties are recognized ideals, groups are often denied the benefits which the liberties carry with them. If, therefore, the above definition of Democracy is to be accepted, the American government becomes less and less democratic with every emasculation of any pressure group's opportunity to use the political technique which experience has shown to be significant in the struggle to get from the government what the group wants.

(1) *By the Economic System* —Some people are restricted by the nature of the economic system. One who earns a living at the boring, enervating, stupefying jobs has little inclination to have opinions. The civil liberties are of little value to him. The same is true of people who are so poor that they cannot maintain a decent diet or get much of an education. Political manipulation and group activity require energy and knowledge. Very often the very poor do not have these available to them. And these people are quite numerous according to our statistics of the distribution of wealth and income. Being in this plight a large group is denied the opportunity to formulate a program in its own interests. These people cannot know what they need or how to get it from the government. Accordingly, they often can be ignored by other groups or at times manipulated easily by those groups in their struggle for the things they want from the government.

Furthermore, the mere necessity to make a living by working for someone else often restricts freedom. A person may be fired for his opinions, party membership, speeches and other activities in favor of policies to which his employer objects. Of course, it is often denied that this constitutes a restriction by the employer on the employee. The argument is advanced that the employee need not accept such a job. But this is not an answer. Employees do not always have a choice of jobs nor do they often have a choice of whether to work or not. They usually must work or starve, and that is no choice. The mere economic necessity to work and the authority of the employer to fire a worker who advocates policies which the former thinks are dangerous or otherwise objectionable constitute a compulsion on the latter which often limits his freedom.

Groups may find themselves unable to use the instruments of communication. A poor group unable to pay the cost for radio time may find itself at a disadvantage. The radio, newspapers, movies, and the mails may also be denied to a group because of opposition to their program. It is a well known fact that speeches to be made over the radio must receive approval of the broadcasting companies. Thus a censorship is im-

posed. Newspaper owners, publishers and editors also restrict the publicity of some groups. What is news? What news is more important than other news? The discretion exercised by the newspapers may work against some groups. Accordingly, whether the activities or propaganda of a group is reported or not, whether it is reported sympathetically or not, or whether it is given prominent position depends often upon pure discretion. A comparison of the reporting of several newspapers will often show that Particular events may be reported prominently by some papers and buried in the back pages or not reported at all by others. Headlines will emphasize different things. A good example of this was the reporting of a recent decision of the United States Supreme Court. The decision upheld the order of the National Labor Relations Board in part and reversed it in part. Accordingly, one paper, sympathetic to the Board, brought out the favorable nature of the decision in its headlines and another paper, antagonistic to the Board emphasized the unfavorable part of the decision.

It is a known fact that newspapers are instruments of group action. One paper may be favorable to the Democratic party and another to the Republican party. One paper may be influenced by farm groups, another by the public utilities, another by labor groups. A publisher's discretion in reporting the news may be affected by his investments or by the advertising from which he makes his profits. The editorial page and the writings of the columnists are the avowed instruments of group action. The newspapers are such important means of propaganda and group action that those groups which can get newspaper support are in a stronger position than those which cannot. In general, it may be said that the power of the press has been on the side of business and agricultural groups.

Control of the news may also occur at its very source, the reporting. In that respect the publisher himself is limited by a press censorship arising out of the very necessity of the reporter to use his discretion in gathering information. With the growth of large reporting agencies the propaganda opportunities of many groups are increasingly restricted. Much news, foreign and domestic, comes to newspapers from the Associated Press, the United Press, Reuters and other European services. All newspapers are dependent to a larger or a lesser degree upon these sources for their news.

It should be clear that while groups are often restricted by these foregoing facts there is still a greater freedom and opportunity for more groups in the United States than in some European countries. In such states as Germany and Italy control of all means of communication rests with one group. Only the propaganda of that group is disseminated. In the United States different groups have the support of different newspapers and many groups use the same newspapers in their struggle for political power and influence.

(2) *By Direct Action of Pressure Groups*—The civil liberties of some groups are often destroyed by other groups. In the struggle to influence governmental action a group may gain strength and effectiveness by suppressing opposition groups. The deliberate policy is to prevent the opponents from using the political techniques rather than to meet them in the open, unrestricted forum in which the conflicting programs can struggle with each other for belief. There is a determination to prevent the disliked arguments from even getting a chance to be accepted. Other people, the general public, are not to be permitted to hear and to be influenced. No choice is left to them to weigh, to consider, or to make up their own minds. The struggle is for power, which may be won by weakening the opponent. This destruction of civil liberties may be accomplished by direct action or indirectly through the use of the machinery of government.

Denial of the use of the means of communication, described above, is one of the methods of direct action. Freedom of assembly may be affected where owners or controllers of halls and buildings refuse to permit a group to use these facilities. It is often difficult, and sometimes impossible, for labor unions, left wing groups, and minority racial groups to rent places for offices and headquarters or to hire halls for meetings, conventions and other demonstrations. At other times they may be restricted in the sense that they cannot acquire those facilities which they desire and are forced to use make-shift or undesirable quarters.

Violence is also a method of direct action. Meetings may be broken up, property destroyed, headquarters raided, and persons of the disliked group beaten, tarred and feathered, kidnapped and even killed. These activities are well known. They can be seen in vigilante groups and in secret organizations such as the Ku Klux Klan.

Direct action is likely to be effective only against groups which are already in such inferior positions that they can do little about it. They include such groups as aliens, negroes and many left-wing organizations such as the I. W. W. in the 'twenties or the communist groups in many sections of the country today. Itinerant workers are often in this position as can be seen by the helplessness of the Mexicans and the "Okies" in the Southwest. Very often, however, violence proves to be a boomerang. It is very difficult to suppress the news of such methods with the result that the publicity may be excellent propaganda for the weaker group. It may acquire supporters more rapidly and develop enough influence to enable it to protect itself from its opponents through governmental action directed against them.

(3) *By Government*.—Indirect action therefore is often the more effective course. Many criminal laws may be used to suppress the civil liberties of groups. In this way individuals and leaders may be arrested and fined or imprisoned for violations of various laws. The vagrancy laws have often been used. A few years ago Browder of the Communist Party was pre-

vented from giving a speech in Indiana by means of an arrest on trumped-up charges of vagrancy upon his arrival and incarceration in jail during the time of the meeting which he expected to address. Many times the charge is not a trumped-up one, but the result is the same. Accordingly, the power of many Tammany leaders has been broken by criminal prosecution. Browder has been convicted of breaking the law by getting a false passport. Fritz Kuhn of the German-American Bund is in jail for theft of Bund money. Also, the New Deal has helped tremendously the breaking up of the Huey Long organization in Louisiana by prosecutions on income tax returns and other charges.

Another common technique is the prevention of meetings, parades, demonstrations, speeches and distribution of literature by denying a permit for the same. Most cities forbid such activities unless a permit is granted by a designated authority—usually the mayor or a police official. In recent years the courts have placed in some instances restrictions on the discretion of these officials but in the past their legal power was virtually unlimited. Accordingly, very often freedom of speech, press and assembly were destroyed merely because an official refused to give a permit for their enjoyment. There are examples of permission being granted to some groups and at the same time denied to others. Groups very often exerted pressure on the local officials to deny such permission to other groups which were feared and disliked.

Pressure groups may use governmental agencies to impose a kind of censorship on others. In some localities there are laws forbidding communists to hold public office. Fear of suits for defamation may cause a restriction on a group's propaganda. In determining what to permit or to prevent going out on the air waves, radio broadcasters are often motivated by the necessity to renew their licenses. Accordingly, groups have often exerted pressure to coerce the broadcasters. Examples would be the protests made to the Communications Commission against radio programs which jazzed the classics and against an allegedly obscene broadcast by the actress, Mae West. Employers have also been denied through the Labor Relations Act the right to propagandize their employees against joining labor unions. Attacks on lobbyists and demands that lobbying be regulated or prohibited by the government are directed against the freedom of petition. It is significant that no group wants its own lobby restricted. Groups which desire to place impediments on the lobby always direct their efforts against the lobbyists of other groups.

Even the mails may at times be closed to some groups. The best examples occurred during and shortly after the World War. At that time the Postmaster General denied the use of the mails to left-wing and pacifist groups. Letters, newspapers and pamphlets were often excluded. Many groups were thereby prevented from using a well established and a very important method of trying to influence governmental policy on war and

on economic and social questions during a period of war hysteria, of feelings of insecurity and of fear on the part of the most powerful groups.

Occasionally freedom of speech, petition and assembly are destroyed by government through the use of force. This occurs where the police and even the armed forces break up the meetings, prevent the speeches and deny the representatives of small groups an opportunity to present their demands to government officers personally. When these things occur the government becomes the instrument of the more powerful groups which desire to see the suppressions because of fear and dislike of their opponents' demands. President Hoover was guilty of this action against the bonus army in Washington during his Administration. Local governments are often to be seen engaged in the use of violence to suppress the civil liberties of unpopular groups. The Hague machine in Jersey City, New Jersey, used force to prevent C I O. meetings, speeches, and distribution of literature in that city in the past. Violent suppression of the itinerant workers of California by local governments there are also well-known examples.

Meaning of "Civil Liberties"

Groups which destroy or decrease the freedom of other groups do not admit that they are violating the civil liberties. They are too well established as sacred elements of American ideology to permit groups recognizing what they are doing. Destruction goes on within the ideology. Groups profess belief in the American symbols of freedom while engaged in destroying it. Such conduct is justified on the ground that the opposition groups are abusing their liberty, that the Constitution of the United States protects liberty but not license. As a matter of fact, however, no one considers his own liberty to be license. That is always some other person's liberty. Neither do people think of themselves as abusing their liberty. The abuse is also attributed to the other fellow.

This raises the question of how much freedom is included in the freedom of speech, press, assembly, petition and religion. Frequently, counter charges are made, namely one group charging that its rights are being infringed or destroyed while others deny that such is the case. This problem may be thrown into two forums: the appeal to the opinions of other people who may decide the matter by supporting the group which it believes to be right and the appeal to the government, including the courts, which must make the same decision.

It accordingly becomes well-nigh impossible to state a very complete definition of the civil liberties. They are always in a state of flux and some groups have more than other groups. The terms are indefinite and possess any meaning which may be given to them. In the final analysis, one has only that degree of freedom which is permitted him or which he is able to get for himself against the efforts of others to restrict his activities.

Some of the accepted limits are known, however, and can be stated. The

most generally accepted limitation is that the civil liberties do not extend to the use of acts of violence to force the government to adopt a particular policy or program of action. There is no recognized right of violent revolution. Freedom is limited to the use of the political techniques described in previous chapters. Closely akin to this restriction is the frequent denial of even the right to advocate the use of violence as a technique to influence the government. And this limitation often exists though there is no real danger of action following the proposal. Words, and words alone, are thus forbidden.

Accordingly, words themselves may be viewed by so many people as being objectionable or inherently bad that they cannot be used. Opposition, for example, to the Communist party and the German-American Bund is so overwhelming in this country that mere activities of those organizations and mere advocacy of their programs may be suppressed even though there is no likelihood of their accomplishment of their objectives because of their weakness. And such is often the case despite the fact that they may restrict themselves to the techniques used by other pressure groups and not resort to force as a method of operation. Obscenity and pornography come within the same category. They may have no effect, other than to offend one's sensibilities, but are forbidden just the same. Therefore, we have in this country censorship of the movies, prohibitions on publishers, denial of the use of mails, and restrictions on radio broadcasts. The activities of organizations may come within the same law. For example, freedom of religion has been held by the United States Supreme Court not to include the practice of plural marriages. And it may safely be asserted that the Christian churches in this country would not permit the government to extend freedom of religion to practices which they would construe to be violations of their moral codes.

Courts as the "Bulwarks of Liberty"

The courts have participated in the setting of limitations to the civil liberties. They have often been called upon to define the degree of freedom to be permitted and to resolve the issue between two or more groups claiming and denying violations of that freedom. Commonly said to be the "bulwark of our liberties" the courts have both expanded and restricted the degree of freedom which they permit people to enjoy. They have tended to follow the tenor of the times during which their decisions were made. In the final analysis, the courts are similar to the other organs of government. Sometimes they have protected a liberty which would otherwise have been destroyed by the executive or the legislature and at other times groups have had to look to the other organs of government for protection from the courts. Probably more often, all the organs of government are on the same side of the controversy over the nature and degree of freedom.

The courts have helped formulate the limitations stated briefly above.

It was the United States Supreme Court, speaking through Mr. Justice Holmes, that stated the principle that words alone were protected. This has been named the "clear and present danger" rule. That is, the court held that the guarantees of civil liberty ended when there was a *clear* and *present* danger resulting from the words. The government, he held, had no right to restrict that freedom any farther. The rule is illustrated by supposing a person should stand up in a crowded theatre and cry "fire." There would be a "clear and present" danger of stampede resulting in physical injury to others and thus no right under the civil liberties to do that. Mr. Justice Holmes seems to hold, however, that the danger of which he speaks does not extend to advocacy of governmental action injurious to another's economic interests. Accordingly it would be permitted to advocate the destruction of the institution of private property even where there is a real and apparent likelihood of its being adopted as governmental policy. The only limitation would be that the advocate could not resort to force.

The difficulty with this rule is that people will differ as to the existence of a danger. This was made apparent in the preceding chapter. It was shown there that people often have a real and sincere fear of consequences which are actually so remote as to be unworthy of credence. Judges often have the same fears and convictions. They may believe that there is a danger just because they abhor and fear the advocate of a program or the program itself. The result has been that the courts have at times forbidden the mere use of words. This is shown in the Gitlow and Abrams cases. In both there was absolutely no evidence of any danger of revolution. In fact the evidence was all in the other direction. The groups were too weak. All they did was to scatter pamphlets in a hit and miss fashion, and their propaganda was of a very inept and unconvincing sort. Yet the defendants in both cases were convicted.

In times of hysteria judges as well as other people may be swept from their moorings and it is at such times that the civil liberties reach a low point in the country. The best example is the World War and the subsequent "red scare" years. Legislation of national and state governments restricted the rights to speak, write, hold meetings, and petition against the participation of the United States in the war and the right to advocate and to strive peacefully for unpopular economic causes. The Department of Justice was noticeably conscientious in prosecutions to enforce such laws. People were convicted by the courts for the expressions of their opinions against things the government was doing in the conduct of the war. For example, there were convictions for insisting upon a pay-as-you-go policy by taxation instead of financing the war by borrowing, for arguing that the draft law was unconstitutional, for saying that the war was contrary to the teaching of Christ, and for criticizing the Red Cross or the Y. M. C. A. Statements like "No soldiers ever see those socks" were held criminal under some statutes because it discouraged knitting for the troops.

A movie producer was convicted and his business thrown into bankruptcy for a film called "The Spirit of '76," which showed British soldiers in a not too favorable light during the American Revolution. In some instances people who had been convicted were released by higher courts on appeal, thus showing that some courts limited and some protected civil liberties. Other persons had to depend upon executive clemency, showing that in these instances ultimate defense of civil liberties came from the executive rather than the judges. In many instances charges brought by prosecutors were dismissed by the courts, thus making them the protectors of freedom.

Courts may also restrict freedom of speech and press through the process of punishment for contempt of court. Newspapers must often be careful what they say about the decisions of judges for fear they may feel insulted. In this respect the judges are a greater danger to the civil liberties than are other governmental officers because the latter are subject to more vigorous criticism and attack than are judges. Other governmental agencies do not have the same power. This separate category into which the judges have placed themselves throws interesting light on their reputation as the "bulwark of our liberties."

In the past ten or more years the federal courts, and particularly the Supreme Court of the United States, have done more to expand and protect the civil liberties than they did during their entire history prior to this period. This has been done by an inclusion of the civil liberties in the Fourteenth Amendment and by a broader construction of their meaning.

The only place the Constitution mentions freedom of speech, press, assembly, petition and religion is in the bill of rights. For many years these liberties were held to be protected by the Constitution only against violation by the national government and not by the state or local governments, on the grounds that such was the intent and wording of the bill of rights. The result was that people had to look to their state constitutions for protection from their state and local governments.

Shortly after the Civil War the 14th Amendment was added to the Constitution. It provided in part that "no state shall . . . deprive any person of life, liberty or property without due process of law." For a long time the United States Supreme Court refused to construe this clause to include the provisions of the bill of rights, except for governmental protection of property rights which it accepted shortly after the adoption of the Amendment. In more recent times, however, it began to expand the meaning of the word "liberty" and this trend reached its culmination in 1930 when it was decided in *Near v. Minnesota* that freedom of speech and press were protected from violation by state and local governments. Since then there has been a great expansion. Censorship of newspapers and discriminatory taxation have been invalidated. Restrictions through the permit system of the rights to distribute pamphlets, to hold meetings, and to make speeches in public places have been reduced. This was done by

decisions which minimized the discretion of local officers to refuse permits. A very interesting and exceptionally broad interpretation is the Supreme Court's ruling that freedom of speech and press include the right of labor to use peaceful picketing in a labor dispute. There was a time when the right to picket was a very doubtful one. It has been gradually recognized by the courts, however, and with this new interpretation it is granted constitutional protection. Accordingly, the court has invalidated state laws against picketing on the grounds that they violated the freedom of speech and press of the strikers.

For a time it appeared that freedom of religion was well on the way to a similar expansion and protection but expectations did not materialize. Some lower federal courts had ruled that the due process of law clause protected the right of a religious group to refuse to salute the flag as part of its freedom of worship. The cases originated out of the belief of a sect called "Jehovah's Witnesses" that the United States flag is a man-made symbol and that their members could pledge allegiance only to divine symbols. The children of this sect have at times been dismissed from the public schools by local school authorities and punished by local courts for their refusal to follow established patriotic rituals in the schools. This denial of religious freedom by local authorities and professional patriotic groups brought the question of religious freedom into the federal courts. While the trend of the past ten years offered evidence upon which to expect that the Supreme Court would render the more liberal decision, it failed to do so.

One should not depend solely upon the courts for the preservation of a broad civil liberty. Judges, like other governmental officers, tend to be like the people who are responsible for putting them in office. They also tend to follow the trends of the times. Consequently, they may make narrow interpretations of the civil liberties of a group which is extremely unpopular. And more than that, there are many deprivations of civil liberty which the courts cannot reach. In the first place, judges cannot take the initiative. If cases are not brought before them for decision they are helpless even though freedom is being destroyed. These infringements are made up mostly of the direct action type which have been described above. If vigilantes raid the headquarters of a labor union and beat, kidnap or kill its members but no prosecution is begun against the violators of the law, the courts do not get an opportunity to protect the rights of the victims. Furthermore, even if cases are brought but not prosecuted vigorously, or if the sentiment of the predominant groups in the community are so opposed to judicial protection of the civil liberties of the victims, there may be no witnesses for the prosecution and the court will be denied evidence upon which to act in their favor. Also, where cases are brought upon charges of the violation of other laws but motivated by the desire to suppress civil liberty and to discredit a particular pressure group,

the court is legally limited to the case before it and not to the broader issue. For example, leaders, workers and members of a group may be prosecuted for vagrancy, disorderly conduct, disturbing the peace or some other charge. The prosecution may not be interested in such offenses but only determined to prevent the group from working to advance its objectives. The judges, however, must decide the case upon the evidence on the specific charge at hand.

The Price of Liberty Is Eternal Vigilance

In the last analysis, the civil liberties depend upon the fight of pressure groups to speak, write and petition for the things they want. Freedom grew out of conflict and its preservation rests in conflict. The never ceasing demand for their enjoyment keeps them alive and by reiteration maintains them as ideals.

Throughout history social and economic changes gave rise to new groups with new interests which struggled with the established groups for a "place in the sun." The latter fought against the change and in favor of the status quo. The civil liberties were a result of this struggle. As new religious groups developed they ran into conflict with the existing churches. It was the demand of the former to be permitted to worship as they pleased that has resulted in the freedom of religion of today. Economic institutions changed also. The rise of a merchant class, of a large group of workers who earned their living by working for others and of industrialists put life and meaning into the natural rights. By their influence they brought about the inclusion of the civil liberties in the natural law, a sacred concept. As society has become more complex more interests and more groups have entered the struggle and this is to be seen going on today.

This conflict also results in the suppression of the freedom of some groups. Those with power and control always object to change which endangers their position. They fear, and, because of the threat to their security, they try to weaken the new groups by denying them the civil liberties through which they may assert themselves and become stronger. The fight over freedom therefore is often the conflict between change and the status quo. Civil liberty is the weapon of that strife. It is often to be seen that the only freedom people want is freedom for themselves. This is particularly true where they hate or fear, and is to be seen today in the denial of civil liberties to weak and unpopular groups whose demands threaten the status quo. The established groups do not want to surrender their security and the new groups want a security which they do not possess. Threatened groups must fight.

The best example of the way in which conflict often results in the preservation of the civil liberties is a recent one. In Jersey City, New Jersey, the pressure groups in support of Mayor Hague's machine fought the C.I.O. The latter was weak within the state and its efforts to build up

its power were often nullified by the superior powers of the former groups, none of which wanted to see the C.I.O. come into Jersey City. In this struggle, the freedom of speech, press, assembly and petition of the C.I.O. were destroyed by denial of permits, kidnapping, beatings, and other suppressions. Force and threats were used by both the city government, and the pressure groups. At times there was vigilante action. The C.I.O. however, was strong outside the state and it began to use its strength to secure the opportunity to build up its organization in the city. The first thing was to get support from the "general public." This was done through a publicity campaign in which the technique described in the previous chapter was used. Particularly was civil liberty stressed. That is a very valuable symbol and closely associated with it is the appeal to the Constitution, Natural Rights, and Democracy. Being "good" symbols people believe in them and they can thus often be effectively used as weapons in the struggle to defend and expand the power of a pressure group. Next the C.I.O. appealed to the national government and the National Democratic party to bring pressure to bear on the Hague machine which soon found itself between two fires—the local groups of A F L , Catholic Church, and employers which wanted the C.I.O. suppressed and the national government which was responding to the national C.I.O. pressure. Hague was attacked in Congress, demands were made for investigations, and there were threats that the "G-Men" would be sent into Jersey City. There are many ways in which the national government can exert influence in state and local governments. Finally, a case of suppression was made in the federal courts and carried to the United States Supreme Court which finally broke the back of the Jersey City strategy by a decision which held invalid some of the denials of the civil liberties in that city. The conclusion of this struggle has been a reiteration, a defense and an expansion of civil liberty in the United States. It must not be thought, however, that the struggle is over.

When a group uses the courts in its struggle against the denial of civil liberty by another group, the judges are often presented with a difficult task. The task is the necessity to make a choice between the two groups, helping one and regulating or restricting the other, and between two opposite rules of law. In making its choice the court may or may not be influenced by its own attitude towards the two groups or by the popularity and power of one group in contrast to the weakness of the other. In making its choice between the two rules of law the court is largely unlimited. Whatever its choice the judges cannot be said to be legally wrong. All that can be said is that they made the choice and that that choice protected or limited the civil liberties. In Jersey City the choice was between local police power and the due process of law clause and the Supreme Court chose the latter thus protecting the civil liberties. In previous years, for example in the *Gitlow* case, it chose the police power and thus destroyed

the freedom of speech and press of the defendants. In another situation, the draft law cases of World War days, the court had a choice between the constitutional power of Congress "to raise and support armies" and the constitutional denial in the bill of rights of power to deprive any person of the civil liberties. The former was chosen and as a result many men lost civil liberty because there is no physical freedom or freedom of speech, press, assembly and petition in the army.

The price of liberty, therefore, is eternal vigilance. The vigilance must be against suppressions from both governmental and other pressure groups. Likewise, effective vigilance is best achieved by pressure groups. This is not the conventional attitude. Most people think only of violations by government and do not see the other. The reason for this attitude is the common distrust of politics described in a previous chapter. It is the bad man myth, the tendency to place upon governmental officials the blame for objectionable actions when in reality the responsibility rests upon the demands of people as well as upon the activities of governmental officers. As a general rule, civil liberty will be protected, will be expanded or restricted or will be destroyed by government only with the support of powerful pressure groups. Civil liberty rests on power and is a factor in the creation and existence of power.

Civil Liberties, Social Change, and Democracy

If there is anything that can be said with certainty about the future it is that society will in many respects be different than it is today. Constant change is a firmly established social characteristic as this study of Social Science very well shows. Changes occur because some people believe in and desire them for a great variety of reasons. Likewise, many changes hurt or are disliked by other people and are often opposed. The result is a conflict of forces, some in favor of the *status quo* and some in favor of change. This conflict may take a peaceful form of argumentation, elections, governmental and social pressure, economic conflict, and adjudication or it may use physical violence as its weapon.

The society most conducive to peaceful change is a democracy. Here the civil liberties are given freest range. In the ideal democracy any group that wanted either to make certain changes or to prevent them could work peacefully through the civil liberties to accomplish its desires. The reason is that democracy means civil liberty and pressure groups. To the extent, therefore, that some pressure groups are suppressed, that some groups or people are denied civil liberties the society is less democratic. As this process of suppression continues the society becomes more and more dictatorial. That is, fewer and fewer groups have complete power to dictate the process of change and to direct it as they desire. The ultimate in this direction is what is known as totalitarianism, in which the power rests in only one group which loyally follows a particular leader.

It is not to be said that a non-democratic society does not change. It does so, but violence is a more common characteristic of change. Disapproving groups must often be suppressed with the violence characteristic of Germany, Italy, and Russia. Also, because dissident groups cannot get what they want, or even strive to accomplish their desires, they are often pushed into the necessity to use force. Dictatorial suppression, therefore, is often the precedent of civil war, riots and internal revolution. This is particularly true of political and governmental changes. In a democracy the government is the instrument of a variety of groups which may bring pressure upon it to change its personnel, its policies and even its institutional characteristics. In a totalitarian country the government is the instrument of only the dominant group. Therefore, all other groups which may want to change the governmental officials, policies or structure are denied the peaceful opportunities provided by the civil liberties and must either accept docilely the dictation of the dominant group or use physical force to accomplish their objectives.

Suppression of civil liberties and of a multiplicity of pressure groups in a non-democratic society means that the only change which can occur is that permitted by the dominant group. People who are dissatisfied, who want different changes or no changes, are denied peaceful means of trying to influence the process and direction of the society in which they live.

It should not be understood, however, that violence does not occur also in democratic societies. There is too much evidence to the contrary to permit any such conclusion. No democratic society is pure. Some groups are always being suppressed, sometimes with violence, and some groups attempt to use force to accomplish what they are not strong enough to do peacefully. That is made clear in this chapter. The significant difference, therefore, between totalitarianism and democracy is one of degree. In the latter, peaceful efforts may be exerted by a greater number of groups and violence plays a much less important part because it is not a necessary method of procedure.

It is sometimes said that democracy is cumbersome and unwieldy because of the multiplicity of interests, the existence of a variety of group influences on social processes and the absence of a definite direction of social changes and governmental policies by one strong group. Dictatorship is held up as the ideal of efficiency. The trouble with such a judgment is its superficiality. It may be sincerely doubted that any society is "efficient" where it tolerates or fosters a great waste of violence, bloodshed and suppression. Also, it may very well be true that some of the suppressed groups possess ideas of social policy which would be greatly advantageous to a large number of people if they could be considered and adopted. The record of many social changes of the past adequately demonstrates the fact that they have often originated with small or minority groups. This is, indeed, the story of the rise of capitalism as we understand it today. A

society which refuses to consider all minority or unpopular ideas is inefficient in the sense that it may be depriving large numbers of its people of changes which would be found advantageous were they to be considered. Furthermore, efficiency does not exist in a vacuum. One must question "efficient for what?" For example, totalitarianism has certainly been efficient, in the sense of quick and effective action, for the destruction of civil liberty and of capitalism but not for their preservation. Even the records of Germany, Russia and Italy in the present European war do not show an inherent superior efficiency of those countries over the nations which have been conquered. This record merely shows that the totalitarians set war and conquest as their goals whereas the conquered nations did not. The latter set up goals of rising standards of living and production of consumers' goods and in this respect they were more efficient than the dictatorships. In the final analysis, totalitarianism is efficient only for the accomplishment of the desires of the dominant group in a society. A weaker group which is suppressed, which is denied the opportunity to influence the government and which is obstructed in the accomplishment of its objectives certainly would not agree to claims of efficiency. For such groups the totalitarian society is extremely inefficient. In fact, the claim of efficiency is made only by those people who are impressed by the military record of Germany, Italy, Russia and Japan, who desire to see society follow certain policies, who are not so modest as to believe that they do not have all the answers to social questions and problems, and who do not want the fulfillment of their desires obstructed by others who have different ideas.

One who believes in democracy, therefore, should strive to protect the civil liberties and to prevent the suppression of pressure groups even where he may disagree with and fight against the adoption of their programs. That is the way to achieve and maintain a democratic society.

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